



WESTON CREEK COMMUNITY COUNCIL COMMENTS ON THE:

ACT GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON PLANNING, TRANSPORT AND CITY SERVICES REPORT NO. 12 – INQUIRY INTO THE PLANNING BILL 2022

Provided to:

**Standing Committee Planning, Transport, and City Services - Jo Clay, Suzanne
Orr, Mark Parton**

Minister for Planning – Mick Gentleman

Shadow Minister for Planning - Peter Cain

**Murrumbidgee MLAs - Chris Steel, Dr Marisa Paterson, Emma Davidson,
Jeremy Hanson, Ed Cocks.**

Your local voice



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Council acknowledged and supported the Government's review of the current Planning Act. However, Council believes that ploughing ahead with District Strategies and a new Territory Plan (when the fundamentals of the Planning Bill have not been addressed) is a recipe for disaster.

The commentary under Planning Minister Gentleman's signature to the committee's 49 recommendations, has rendered the response meaningless and does not encourage any community confidence for the future of good planning for the ACT. The Government's response cements the belief that a predetermined outcome was always the true agenda. The so-called planning review and subsequent response to the Inquiry, has missed the opportunity for meaningful reform. Any constructive or innovative thinking has been missed.

An outcomes-based approach could be refreshing. Planning for and developing the Territory for future generations with a focus on climate mitigation, liveability and affordability was commendable. BUT Community views have been ignored. The Committee recommended that the ACT Government publish explicit and detailed reasons in a listening report or consultation report as to why the recommendations that were made by those who submitted to the government consultation were not actioned in the Bill, Territory Plan, or District Strategy. It is insulting that this was not undertaken. The content and quality of the so-called listening report issued on 23 May 2023 further reinforces the view that the outcome of the community consultation was predetermined.

For true reform Council has always suggested that the best approach would be to advance two (2) Bills for Assembly consideration with the intention of approving both a:

- a Planning Policy Act
- and a Planning Administration Act.

Council's many concerns include:

- ❖ The Parliamentary and Governing Agreement contemplated a reform of the Planning arrangements. **THE REVIEW DID NOT DELIVER TRUE REFORM, JUST PROVIDED A RESET POINT FOR THE EXISTING SCHEME.**
- ❖ The process sought to **ENTRENCH THE ROLE OF THE BUREAUCRACY AS THE PRIME ARBITER WHILE SUBVERTING THE ROLE OF THE LEGISLATURE.** We understand that expert advice on the probity risks this arrangement presents was not 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 recent 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. Council notes the number of Members was increased in the 2016 Territory Election to enable Members to better scrutinise business. Therefore, **THE ASSEMBLY BUSINESS SCHEDULE NEEDS TO BE FRAMED WITH PLANNING AND LAND USE AS A KEY ITEM OF ONGOING BUSINESS.**

Yours sincerely
Bill Gemmell, Chair,
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The Government's response to the committee's 49 recommendations, appears to lack any genuine consideration of the recommendations offered. Council is extremely disappointed with this response and has many concerns including:

- Many probity and governance risks are still presented in the Bill.
- The feedback provided in good faith has not been adequately addressed.
- Community consultation is largely missing from the draft.
- The human right to a healthy environment is seriously lacking in the Bill. This is a missed opportunity for the Territory to be a leading example for environment protection.

GOVERNANCE. Concerns:

- ❖ **Multitude of roles still held by the Chief Planner** are of great concern to Council. Clearly the Bill has been drafted in isolation from the messaging from the ACT Integrity Commission about preventing arrangements that will create conflict of interest situations.
- ❖ Prorogue. **A sunset clause needs to be included for the Review**, especially considering the election timing.
- ❖ Government's **response rejects the opportunities for Assembly debate and scrutiny**. There is a heavy reliance on notifiable instruments such as the Minister declaring a Territory Priority Project. There needs to be the ability for community to participate in the process of deciding TPPs. This could be facilitated by the inclusion of Disallowable Instruments
- ❖ **Community members are unable to apply for a controlled activity order**. The complaint process has been deleted and this leaves no complaint process avenue for the community.
- ❖ **Rebuttal of calls for independent panel of experts or independent review**. There are no case managers for DAs. Independent advice and reviews must be included.
- ❖ The overall vagueness of the Bill is concerning. There is a **lack of any definition of planning outcomes or any assessment criteria**. Objects of the Act and the principles of good planning should be included in decision making and be transparent. Additionally, planning decisions and reasons should be published.
- ❖ There is still **little clarity over minor and technical amendments and no clearer penalties for deterring exempt development** breaches. The reference to Design Guidelines has limited scrutiny by legislature of these important documents. Noting that the Guidelines were not made available questions their authenticity.
- ❖ **Other Frameworks** should be required to be taken into account.

COMMUNITY and CONSULTATION, LIVEABILITY and AFFORDABILITY

- ❖ There is a need **for genuine community consultation** to be included in the Bill. WITH sufficient time to contribute, early enough in the process for it to make a difference and run in accordance with good principles **embedded in legislation**.

- ❖ There is a **lack of accountability for Territory Priority Projects**, again with insufficient community consultation.
- ❖ No agreement was given to provide criteria as to **what would provide a substantial public benefit** and no agreement was given to provide any reasons for decision making.
- ❖ The **dismissal of forming a social planning committee or group** again reinforces the disingenuous offers of any transparency.
- ❖ There is a **reduction in consultation**. Periods of consultation are shortened, pre-DA eliminated, and guidelines are not yet available.
- ❖ Community members are **unable to apply for a controlled activity order**.

ENVIRONMENT PROTECTION and MITIGATION.

- ❖ **The human right to a healthy environment is absent** in the Bill. Council suggests that the human condition and climate impacts be embedded in the Bill.
- ❖ **Ignoring repeated feedback that residents value their open green spaces to participate in a healthy and active lifestyle**
- ❖ **Lack of agreement to a landscape architect**
- ❖ Given powers to **override the Conservator of Fauna and Flora**.
- ❖ **Lack of environmental controls** and the compliance powers are not adequate
- ❖ Definitions for common understandings would enhance the Bill. For example, **define ecological sustainable development**.
- ❖ **Dismissal of the cumulative impacts of climate change** is outrageous. References to cumulative environmental impacts need to be included.

Weston Creek Community Council (WCCC) appreciated the opportunities to make submissions to the Planning Review and Reform and to the Inquiry into the Planning Bill. WCCC also appreciated the opportunity given to speak at the Inquiry into the Planning Bill.

Out of sheer frustration in the search for any visible evidence of a true Government commitment to planning reform, Council drafted this response. Please see the following additional comments against the 49 recommendations for consideration.

Council would welcome the opportunity to discuss this commentary further and looks forward to a response.

#	RECOMMENDATION	GOVERNMENT RESPONSE
1	<p>The Committee recommends that the ACT Government amend the Bill to require longer time periods for public consultation on key planning decisions, including:</p> <ul style="list-style-type: none"> • For Development Applications, from 15 working days to 20 working days; • For significant developments, from 25 working days to 40 working days; • For draft Environmental Impact Statements, from 30 working days to 40 working days; and • For draft major amendments to the Territory Plan, from 30 working days to 40 working days. 	<p><u>Agreed in part</u></p> <p>The Government considers the current time periods provide a balance between the needs of the proponent to progress a project and the rights of the public to provide input to the decision-making process.</p> <p>The Government will amend the Planning Bill 2022 (the Bill) and the planning regulations in relation to significant developments to include a two-stage notification process.</p> <p>Stage one notification will involve consultation for 20 working days, after which the proponent will be required to respond to public comments and entity advice.</p> <p>Stage 2 notification will commence once a response has been received by the proponent and will involve a further consultation period for 10 working days where the public can view and comment on the proponent's responses. This will require a corresponding change to the statutory timeframe for a decision, prior to a deemed refusal.</p> <p>A proposed development is a significant development if it requires any of the following: (a) a subdivision design application; (b) consultation with the design review panel; (c) an environmental impact statement.</p>

WCCC COMMENT

The Government's response does not appear to offer transparency or offer community input.

Concerns include:

- Current time periods have significant issues including: timing of consultation, for example over a holiday period; advertising of development, example the DA tracker has changed the labelling of maps
- The public should be able to comment on all developments, not just significant developments

Council makes the following suggestions for inclusion in the Planning Act: (Adopted from the SA 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

#	RECOMMENDATION	GOVERNMENT RESPONSE
2	<p>The Committee recommends that the ACT Government amend the Bill to include in the ‘principles of good consultation’ that:</p> <ul style="list-style-type: none"> • consultation must be well-informed; • community and developers must be consulted early in the process; • views must be taken into account; and • relevant people, including those in nearby affected areas, are directly approached and not only approached via a general public call. 	<p><u>Agreed in principle</u></p> <p>The Government agrees that further clarity should be provided on the outcomes sought through the Principles of Good Consultation. Guidelines will detail how the Principles of Good Consultation should be implemented in line with statutory processes and will provide further detail on best practice consultation approaches. This is provided for under Section 12 of the Bill.</p> <p>Section 11(2)(e) already provides that consultation must be well informed by requiring any consultation to be resourced and the processes are appropriately supported, taking into account the significance, complexity and likely impact of the subject of the consultation. Further, Section 11(2)(d) requires that information provided as part of the consultation must be adequate to make sure all stakeholders understand the subject of, and issues relating to, the consultation and can give informed responses.</p> <p>The Government encourages proponents to undertake early consultation for all developments. Section 11(2)(g)(i) provides that consultation is timely if it is undertaken at an appropriate time in the planning process. In some, but not all cases, early consultation will be appropriate. Examples will be provided in the Guidelines when this should occur.</p> <p>The Government does not consider it practical to require that views must be taken into account. While all views should be carefully considered (as is required by the Bill, for Development Applications (Section 183(g)), for revising or withdrawing a draft major plan amendment (Section 64(2)), for a proposed minor plan amendment (Section 84(4)), in revising the draft Territory Plan review report (Section 90(2)) and before making a Territory Priority Project (Section 215(4)(c)), it is not uncommon that varying views on a proposal might be received. Instead, the Guidelines will require a proponent to show how they considered the views and provide reasons on the final outcome. This principle also applies to the Territory Planning Authority in deciding Development Applications (see Section 193(2)(c)).</p> <p>The Government considers there are a range of ways consultation could be conducted, and in some instances, a direct approach to potentially impacted community members would be appropriate. The Guidelines will provide further clarity on best practice consultation including where a tailored consultation approach would be beneficial. The Government will consider this further prior to debate of the Bill.</p>

WCCC COMMENT

Agreed in principle is non-committal in action.
 Add: sincere consultation with adjoining properties
 The Committee recommendation is vital for the Review to have credibility and be trusted.
 Guidelines need protection within the Bill to ensure good practice and quality outcomes.
 Definitions must be included for consistency of language and understanding.
 Needing Government clarity:

- What are the Principles of Good Consultation?
- When is early consultation not appropriate?
- What are the parameters of what is practical?

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
3	<p>The Committee recommends that the ACT Government publish explicit and detailed reasons in a listening report or consultation report as to why the recommendations that were made by those who submitted to the government consultation were not actioned in the Bill, Territory Plan, or District Strategy.</p> <p>This should be an ongoing practice, and accordingly, the proposed Territory Planning Authority should consider and respond to community and stakeholder feedback on Territory Plan variations.</p>	<p><u>Noted</u></p> <p>All 'recommendations' within the 329 submissions were considered in detail. None were rejected. They were grouped by theme, carefully considered and appropriately responded to in the following categories to reflect the Government's position:</p> <ul style="list-style-type: none"> • Agreed – change made to Bill (this is self-explanatory – the comment is agreed, and a change has been made as a result of feedback); • Agreed in principle – change made to Bill (this is where the principle of the feedback is agreed and that an amendment to something potentially already in the Bill has been made or that a change that is considered to retain the core principles of the Bill but also capture the principle of the feedback is made); • Agreed in principle – no change required (this is where it is considered that the principle of the comments might already be reflected in the Bill or that elements of the comments might be agreed but it is considered no change is required to the Bill); • Not agreed / outside of scope (this is where the comments are not agreed and not considered to align with the purpose, principles and role of the Bill and therefore outside scope of the Bill); • Noted (this is where comments are neither agreed or not agreed; comments might relate to matters that are not relevant to the Bill or the scope of this project and therefore noted or acknowledged); and • Noted – passed on to the relevant team/agency (this is where comments are those as described above but where it is considered the comments are not within the scope of the project and can be directed to a relevant team of the directorate, or government for information in the work that the comment might be more relevant to). <p>The level of detail able to be provided in a Consultation Report is dependent on the volume and complexity of comments received during the consultation process. Consultation on the Bill received in excess of 1,300 individual recommendations from the community for consideration. The category response provided was considered the optimal approach to capture and respond to all comments, concerns and ideas that were raised during the consultation process in a timely manner.</p>	<p>Considering the time and effort that was made by individuals and groups who submitted to the Government consultation- it is insulting that they were <i>grouped by theme</i> and then not responded to.</p> <p>The number of responses reflects the importance given to the Review by those who made comment, and this should warrant a response.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
4	The Committee recommends that the ACT Government provide hypothetical examples of planning decisions and outcomes during the consultation and workshop these to demonstrate how this new system works and how it differs from the current system.	<u>Agreed</u> The Government will be providing case studies on how Development Applications and Territory Plan variations will be processed under the new Planning Act and the new Territory Plan as part of community and industry education on the implementation of the Bill. This advice was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing, which was held on 7 December 2022 as part of QON 15	This is a good recommendation and an appropriate Government response. WCCC suggests that this be extended to the District Strategies and Design Guides.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
5	The Committee recommends that the ACT Government ensure that the Territory Planning Authority's website is accessible and make explicit the ability for members of the public to access information in-person at Access Canberra, as well as ensuring the same information is available to people with no internet access, at no additional cost.	<u>Agreed</u> ACT Budget funding was provided in 2022/23 for the implementation of a new planning system. Funding was provided for the design and development of digital infrastructure to support the new planning system, drive innovation and improve customer interface, including for the Territory Planning Authority's website. Canberrans can currently inspect the public register at the Access Canberra Specialised Centre in Mitchell free of charge or by emailing the Environment, Planning and Sustainable Development Directorate (EPSDD). There is currently a fee for obtaining copies and extracts of associated documents. This service will remain in place as part of the new system.	Introductory workshops would also improve access and usability.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
6	<p>The Committee recommends that the ACT Government amend the Bill to include a requirement that, for significant developments, the proponents undertake consultation early in the development process and prior to the Development Application consultation process.</p>	<p><u>Agreed in principle</u> Community consultation is a fundamental element of a good planning system. The Government encourages proponents to undertake early consultation for all developments.</p> <p>Under the current system, pre-development consultation seeks to encourage developers take onboard community concerns and address them through design changes while the development is still in the early stages.</p> <p>During 2019, EPSDD reviewed the operation of the Pre-DA Community Consultation Guidelines over the first 12-months they were in place, including a compliance audit of select Development Applications that undertook Pre-DA consultation during the period. The findings indicated that both the community and industry had little confidence in Pre-DA consultation achieving better design outcomes. Ultimately, PreDA consultation has seen mixed results with stakeholders confused about the purpose of the process, and generally perceived not to be meaningful.</p> <p>Under the Bill, Pre-DA Community Consultation has been replaced with increased focus on consultation during the statutory Development Application process. The Bill introduces “Principles of Good Consultation”, and future guidelines will detail best practice consultation approaches. Additional time is also provided in the Bill for consultation on significant developments.</p> <p>The consultation process required under the Bill allows for input at various times prior to and during the Development Application process. This includes review by the National Capital Design Review Panel, advice from entities, and seeking input from the community through the public notification process.</p> <p>It is acknowledged that some stakeholders value the opportunity to consider development proposals as early as possible; however, it is important to strike a balance between allowing a developer to make the case for a development, the community’s right to comment, and the planning and land authority’s role as an independent decision-maker. The ACT Government consider that the extended public notification period provided to significant Development Applications together with the “Principles of Good Consultation” under the Bill adequately achieves this balance.</p> <p>The Government’s response to Recommendation 1 supports additional notification requirements for significant developments. It maintains the opportunity for early community input while increasing the accountability of proponents to the consultation process.</p>	<p>If the Government honestly believes that <i>community consultation is a fundamental element of a good planning system</i> – then WCCC considers pre-consultation to be a key component.</p> <p>The problems in the past were more associated with timelines and poor information.</p> <p><i>Future guidelines</i> as a response is too vague.</p> <p>A balance and best outcome will most likely be achieved if authentic conversation takes place with all parties in the early stages.</p> <p>Council suggests:</p> <ul style="list-style-type: none"> • 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.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
7	The Committee recommends that the ACT Government include in the requirement for consultation early in the development process that the consultation be in accordance with the principles of good consultation and that proponents demonstrate how the proponent has incorporated community feedback into the development proposal as proposed in the Development Application.	<u>Agreed</u> As outlined above, Guidelines will detail how the Principles of Good Consultation should be implemented and provide further detail on best practice consultation approaches. Any consultation conducted prior to the lodgement of a Development Application would be expected to be undertaken in accordance with the Principles of Good Consultation as outlined under Section 11 of the Bill, including transparency on the reasons for decisions, including how community views have been taken into account.	Principles of good consultation need to be explicitly stated. Guidelines are notifiable instruments and therefore will not have any real statutory power. If Government persists in this model, then Guidelines should be disallowable instruments to allow debate.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
8	The Committee recommends that the ACT Government consider implementing a threshold on how many corrections a proponent can make to a Development Applications, especially when an amendment to a Development Application is a substantial to the design and requires further consultation.	<u>Agreed in principle</u> It is unclear from the Committee's report the number of times a proponent should be limited to amending a Development Application or the benefit of this approach. Such a limitation would result the proponent being required to lodge a new Development Application increasing cost and timeframes for projects (and in turn, potentially, affordability of the final product). Amended Development Application's must be publicly notified in the majority of cases. It should be noted that amendments occur not only during the application process but also post approval being received. The Government will explore ways to reduce the number of amendments to Development Applications, including increasing fees where a proponent makes a large number of changes. It is possible that this can be addressed administratively.	This recommendation will need careful consideration, especially in applications that are not sympathetic to the area or require a zoning amendment.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
9	The Committee recommends that the ACT Government provides a consistent touchpoint on cases for Development Applications such as through a system or case manager, to ensure all inquiries are handled properly and in a well-informed manner for proponents and stakeholders.	<u>Not agreed</u> The Government does not support introducing a single touchpoint for Development Applications as this could potentially increase probity and integrity risk for the Territory. The ACT Government has invested considerable effort in safeguarding the Development Application assessment process against corruption, probity and integrity risks. The current process allows for proponents or the members of the community to contact a single coordination point (being the Development Application Coordinator) for information and updates on the progress of their Development Application, however contact between the proponent and the person assessing the Development Application is generally not encouraged, reducing the risk of unhealthy relationships developing. There is no evidence in the Report to suggest that the Government currently do not handle queries from proponents and the public appropriately. The recommendation risks diluting the Government's anti-corruption, probity and integrity initiatives.	Why is the independent Anti-Corruption Commissioner not mentioned at this point?

#	RECOMMENDATION	GOVERNMENT RESPONSE
10	The Committee recommends that the ACT Government introduce amendments to the Bill to provide clearer penalties to act as a deterrent for 'exempt development' that is not in fact exempt.	<p><u>Noted</u></p> <p>Under the new legislative framework, it is proposed to have two regulations: a general regulation and an exempt development regulation. The exempt development regulation will detail what is and is not an exempt development. This approach has been taken to make it easier to locate and navigate the provisions for exempt development, as these are provisions which are regularly accessed by the building and development industry. Section 399 of the Bill provides significant penalties where a person undertakes development without development approval. The penalty ranges from 60 to 2,000 penalty units (2,500 penalty units for a corporation) depending on a person's conduct. The offence as drafted in the Bill is extremely clear. The Government will undertake community awareness to educate the community on exempt developments.</p>

WCCC COMMENT

Governance and enforcement are issues at this point.

Present experience with Fix My Street, community complaints, and non-compliance have demonstrated a consistent lack of enforcement or penalties. The issue is not community education, it is Government enforcement. Regulations should also reward appropriate behaviour with incentives such as reduction of fees.

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 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.

Timeliness in the handling of complaints needs to be explicit 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

#	RECOMMENDATION	GOVERNMENT RESPONSE
11	<p>The Committee recommends that the ACT Government review the current arrangement whereby the role of the Chief Planner and the role of the Director-General of EPSDD are held by the same person, to see whether better governance and potentially better outcomes could be achieved by separating those roles</p>	<p><u>Agreed</u></p> <p>The Government has full confidence in the independence and the governance framework established to guarantee appropriate governance and separation of roles of the Chief Planner and the Director-General, EPSDD and the professionalism and integrity of delegated staff in the Authority. The Bill provides for the appointment of the Chief Planner as the statutory officeholder who performs the functions of the Territory Planning Authority. The Chief Planner is appointed by the Australian Capital Territory Executive. The Director -General, EPSDD is engaged by the ACT Head of Service under Section 31(2) of the Public Sector Management Act 1994. The Director - General is responsible for leadership of EPSDD and leadership in the ACT public service and furthermore answerable to the Minister(s) responsible for the portfolios covered by EPSDD and to the ACT Head of Service. Each role and function is clearly described and separated by legislation. It should be noted that it is not uncommon for officers in the Government to have a number of responsibilities under their portfolio. For example, the Conservator of Flora and Fauna is also the land manager (Parks and Conservation), regulator, Executive Group Manager of Environment, Heritage and Water (policy), and holds portfolio responsibility for the Heritage Council. Governance arrangements associated with the planning system are primarily concerned with the statutory decisions made by the Territory Planning Authority, and the performance and accountability indicators/measurements associated with its decisions. Statutory decisions made within the planning system are currently subject to review in the ACT Civil and Administrative Tribunal (ACAT) and in the ACT Supreme Court. This will continue under the new system, and therefore there is no need to review this arrangement. Performance and accountability indicators and measurements are annually reviewed as part of the annual reporting processes.</p> <p>Notwithstanding the above, the Government will undertake a review to make sure that the governance arrangements are best practice and fit for purpose for the new planning system. The Government will also consider the timing of such a review as the timing of any potential change could result in the current Chief Planner / Director-General being made redundant, given current arrangements, with consideration needing to be given to appropriate compensation (given potential removal of an officeholder from a statutory office; this may also require further legislative change). This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 7.</p>

WCCC COMMENT

Unfortunately, the submissions do not concur with the Government’s confidence in itself.

Council has serious concerns for the response here. There appears to be misplaced trust in the present system without any real intention to review alternate models. The response indicates *agreed*, but the attached narrative deems this senseless. Is this really just a Swiss Cheese Risk Model?

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.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
12	<p>The Committee recommends that the ACT Government review governance and administrative arrangements to ensure that entities and individuals that are intended to provide frank, fearless and independent planning advice to the Chief Planner, can do so.</p>	<p><u>Agreed</u></p> <p>Advice provided by any referral entity and individuals is intended and expected to be “frank and fearless” and independent (refer to Sections 8 and 9 of the Public Sector Management Act 1994). Referral entities do not have any structural relationship with the Territory Planning Authority or Chief Planner in the current legislation or the Bill.</p> <p>The Chief Planner has no role in appointing, dismissing, directing, tasking or remunerating staff employed by EPSDD, or any other entity within the ACT Public Service. The ESPDD Director-General’s powers, roles and responsibilities for recruitment and related matters are established under the Public Sector Management Act 1994, Public Sector Management Standards 2016, and ACT Public Sector Enterprise Agreements. These powers have been delegated to various officer levels throughout the directorate. Executive contracts (for example, the Conservator of Flora and Fauna) are administered centrally by the Chief Minister, Treasury and Economic Development Directorate on behalf of the Head of Service, who has responsibility for Executive appointments, suspensions, and terminations (see the Public Sector Management Act 1994). Remuneration of Executives is set by the ACT Remuneration Tribunal, not the Director-General</p> <p>In all administrative systems it important for decision-makers to receive frank and fearless advice. This applies to planning systems, whether outcomes focused or more prescriptive. It is always in the Government’s or decision-maker’s interest to be made aware of the consequences that a proposed policy or decision may have.</p> <p>Notwithstanding the above, the Government will undertake a review to make sure the governance arrangements are best practice and fit for purpose for the new planning system.</p> <p>The timing of this review will need to consider the timing of the review proposed in Recommendation 11.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 7.</p>	<p>The response indicates <i>agreed</i>, but the attached narrative does not. This is of particular concern with:</p> <ul style="list-style-type: none"> • The role of the Chief Minister and the Chief Planner • Decisions of the Conservator of Fauna and Flora being over-turned

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
13	<p>The Committee recommends that the ACT Government amend clause 47 of the Bill to ensure that the Territory Plan must give effect to relevant outcomes related to planning contained in other government strategies and policies.</p>	<p><u>Noted</u> The Bill provides that the Territory Plan, Planning Strategy and District Strategies may give effect to relevant outcomes related to planning contained in other Government strategies and policies.</p> <p>Flexibility is necessary in order for an efficient planning system to operate. There may be circumstances where outcomes as specified in Government policies and strategies are in conflict and the role of the decision-maker is to balance these during the deliberation process. Also, not all of the provisions in these government policies are relevant to planning.</p> <p>The mandatory inclusion of all outcomes related to planning contained in other government strategies and policies in the Territory Plan could lead to perverse outcomes (noting that under Section 50 of the Bill the Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the Territory Plan).</p> <p>On balance, the Government considers it is appropriate to retain the current approach in Section 47(c) of the Bill.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 12 noting that this question specifically asked to clarify why consideration of recent strategies such as the ACT Climate Change Strategy, the Living Infrastructure Plan and the Urban Forest Strategy are only discretionary considerations under Section 47(c), and not mandatory.</p>	<p>This response demonstrates a distinct lack of transparency.</p> <p>This response is a good example of maintaining the current business as usual approach.</p> <p>Council suggests:</p> <p>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.</p> <p>Of great concern is the cavalier 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.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
14	<p>The Committee recommends that the ACT Government amend clause 187 of the Bill to ensure that when making decisions contrary to entity advice, the Bill:</p> <ul style="list-style-type: none"> • provides criteria as to what would 'provide a substantial public benefit'; • requires the decision-maker to publish reasons for the decisions; and • sets clear limits on the decision-maker to override the ACT Conservator of Flora and Fauna's advice. 	<p><u>Not agreed</u></p> <p>The Government does not support defining 'a substantial public benefit' within the Act. The public benefit to the Territory may vary for each proposal. Public benefit is commonly used in legislation and it is considered appropriate that the ordinary meaning apply, which is not uncommon.</p> <p>The Government does not consider amendments are required to Section 187 of the Bill in relation to the publishing of reasons where a decision is inconsistent with entity advice. Section 193(2)(c) provides for a decision notice to include the reasons for the decision. Section 193(2)(d) provides for a decision notice to include a summary of any entity advice in relation to an application received from an entity and under Section 193(2)(e) if the decision-maker does not follow the entity's advice in making the decision, the decision must provide the reasons for not following the advice.</p> <p>It is the Authority's practice to include a summary of all entity advice received and if considered necessary depending on the nature of the departure, a statement of why the Authority departed from entity advice in the Notice of Decision for a Development Application. All decisions are published on the Authority's website and are available for public inspection.</p> <p>The Bill already provides clear limits on the decision-maker to carefully consider and in certain circumstances act inconsistently with the advice of the ACT Conservator of Flora and Fauna. The limiting provision to allow the Minister for Planning and Land Management or the Chief Planner to depart from Conservator advice in relation to declared protected matters, must significantly improve the planning outcome to be delivered, provide a substantial public benefit and be consistent with the offsets policy.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 7.</p>	<p>It would appear that the Government is protecting its privilege of stating any purpose to steam roller its way through proposals without any true consultation. As an alternative to amending the Bill, an explanatory note inserted immediately below the provision could be used to provide an explanation of the legislature's intent.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
15	The Committee recommends that the ACT Government ensure the Minister refer all major Territory Plan variations to the relevant Assembly Committee, and the Committee have 20 business days to decide whether to inquire, as per current provisions in the Planning and Development Act 2007. If a shorter timeframe is required, then the Minister, when tabling the major Territory Plan variation, should request the relevant Assembly Committee to consider a shorter time period and provide reasons as to why urgency is needed.	<p><u>Not agreed</u></p> <p>The reduction from 20 to 10 business days is to improve the overall efficiency of the planning system and provide greater certainty to proponents. To support an efficient and effective planning system, the Government supports retaining the 10 business daytime period currently in the Bill.</p> <p>The 10 business days allows the Committee to decide whether an inquiry is to be held. The tabling of the major Territory Plan variation occurs either after the committee advises no inquiry is required or once the inquiry process has been completed.</p>	<p>Council supports the recommendation 15.</p> <p>Open conversation builds trust and builds a positive culture.</p> <p>The real question here is, why not?</p> <p>Council suggests: Sufficient community consultation must be mandated. Council does not support:</p> <ul style="list-style-type: none"> 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.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
16	The Committee recommends that the ACT Government explore opportunities to employ an independent professional body of experts who can feed into the decision-making process when overriding entity advice under clause 187 of the Bill.	<p><u>Not agreed</u></p> <p>The decision-maker for a Development Application does not 'override' entity advice, rather, the Bill is clear that the decision may be inconsistent with such advice, having carefully considered it and other relevant information. Referral entities are professional bodies that provide independent advice to the Authority to aid the decision-making process. The Authority is an independent body (of professional experts) established to consider expert advice and make decisions, and the implementation of this recommendation would duplicate the functions and role of the Authority and other parts of the ACT Public Service and would be costly and inefficient, given that it would effectively require the creation of another government entity duplicating existing entities.</p>	<p>An independent authority is necessary.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
17	The Committee recommends that the ACT Government review the timeline in the Bill that allows 10 days for the Federal Minister for Environment to respond to ensure that this timeline matches the Federal Minister's practices and if not, that this timeline be reviewed.	<u>Agreed</u> The Government will review the timeline in the Bill to make sure it matches the Federal Minister for Environment's practices. Where there is conflict between the timelines provided in Commonwealth and ACT legislation, the timeframes provided in the Commonwealth legislation would apply.	Agreed to recommendation 17.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
18	The Committee recommends that the ACT Government provide sufficient links, in the legislation, between the objects of the Bill and decisions by decision-makers.	<u>Noted</u> The Government does not consider it necessary to provide explicit links in the legislation between the objects of the Bill and decisions by decision-makers because the provisions of the planning strategies, plans and policies must have considered the object of the Act (refer to Section 10). The Bill establishes the framework for the planning system and the hierarchy of documents and policies required under the Bill (e.g. the Territory Plan and District Strategies) to give effect to the planning system. Section 10 of the Bill states that to achieve good planning outcomes, a person must consider the object and the principles of good planning set out at Section 10(a) to (i). Those principles inform the development of documents such as the Territory Plan, by setting out the desired outcomes pursuant to which Development Applications are assessed. Section 183(a) sets out that in deciding a Development Application any applicable desired outcomes in the Territory Plan must be considered. Drawing explicit links throughout the legislation to the objects of the Act would be inconsistent with best practice drafting principles applied by the Parliamentary Counsel.	This is a good example of why 2 Bills would enhance best practice.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
19	<p>The Committee recommends that the ACT Government ensure that people and bodies involved in the administration of the Bill are required to exercise powers and functions and make decisions consistently with the objects of the Bill.</p>	<p><u>Agreed in principle</u> As outlined in the response to recommendation 18, the object of the Act must be considered by any person when developing planning strategies, plans and policies. The recommendation of the Committee is therefore already achieved in the Bill.</p> <p>The Planning and Land Authority is currently developing a training package to assist its staff to undertake their duties in accordance with the requirements of the proposed new legislation, acknowledging the extensive range of skills, experience and qualifications that already exist within the organisation.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 21</p>	<p>Agreed in principle but with a negating supporting statement.</p> <p>The point to be made here is also that the roles of the Chief Planner and Chief Minister are too entwined. Accountability would be better served by an independent body.</p> <p>Additionally, the response misses the point that this is actually about governance and the present lack of it.</p> <p>A training package being developed by those who refuse external scrutiny, or any innovative thinking will only ensure the current poorly structured Act and convoluted practice will continue.</p> <p>Additionally, a code of conduct and responsibilities on these roles be made explicit. Additions for example could include, but not limited to:</p> <ul style="list-style-type: none"> • 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

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
20	The Committee recommends that the ACT Government ensures the Territory Planning Authority has the sufficient staff, upskilling, training, and resourcing to support the new planning system, and that meaningful evaluation of resources is done on an annual basis.	<p><u>Agreed</u></p> <p>ACT Budget funding was provided in 2022/23 for the implementation of a new planning system including providing training for users of the ACT's planning system and providing an appropriately skilled workforce to implement and enforce the reforms. Resourcing needs for the Authority will continue to be evaluated through normal budget processes.</p> <p>The Authority is currently developing a training package to assist staff to undertake their duties in accordance with the requirements of the proposed new legislation, acknowledging the extensive range of skills, experience and qualifications that already exist within the organisation.</p> <p>Staff at EPSDD and the Authority have the relevant professional skills, experience and qualifications to make appropriate decisions in planning matters to achieve good planning outcomes through exercising their functions under the Act.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 21.</p>	<p>Again, an agreed response followed by a contradicting statement.</p> <p>It would appear to many that the normal budget processes have not been successful with this issue.</p> <p>Again, the training package will only serve to maintain the comfort of business as usual.</p> <p>There is no forward thinking in this response as to bringing in new staff, annual review or long-term planning and goal setting.</p> <p>An independent panel would be effective to implement recommendation 20.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
21	The Committee recommends that the ACT Government publish an organisational chart for the Territory Planning Authority	<p><u>Agreed</u></p> <p>A high-level organisation chart of the Authority is published here and was provided to the Committee during the Inquiry (response to QON 7). Details of individual Authority staff who are delegated as decision-makers are not published due to probity and integrity reasons.</p>	<p>Council congratulates the Government's recognition of probity in response 21.</p> <p>Doesn't this naturally flow to the separation of powers point?</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
22	The Committee recommends that the ACT Government undertake a review of the operations of the Bill and the full package of the planning reform within two to three years of commencement.	<p><u>Agreed in principle</u></p> <p>The Planning Act and other elements of the reformed planning system will be reviewed, and amendments will be considered on a periodic basis in accordance with normal legislative review timeframes</p>	<p><i>Considered on a periodic basis in accordance with normal legislative review timeframes only maintains the status quo.</i></p> <p>WCCC recommends a sunset clause be inserted in the Bill, compelling the promised review be undertaken.</p> <p>There is also an over-reliance on notifiable instruments which does not allow Assembly scrutiny.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
23	The Committee recommends that the ACT Government consider appropriate resourcing of the ACT Civil and Administrative Tribunal to ensure that it has the capacity, specialist resources and expertise to review decisions under the new planning system.	<u>Noted</u> Resourcing needs for the ACAT will continue to be evaluated through normal budget processes. The Government is currently seeking to engage additional Tribunal members with planning knowledge and expertise	If the intent of the review is to reduce the amount of disputation going to ACAT, then logically the ACAT resourcing component would fall. We note that the Government can control the time taken by ACAT to consider disputation through the allocation of resourcing. Council suggests the following for ACAT matters: <ul style="list-style-type: none"> • 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

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
24	The Committee recommends that the ACT Government amend the Bill to enable any person(s) to retain their rights to access administrative or judicial remedies to enforce a breach, or anticipated breach, of the Bill, and to reinsert the ability for community members to apply for a Controlled Activity Order.	<u>Noted</u> The Government does not support the retention of the capacity for community members to apply for a Controlled Activity Order to enforce a breach, or anticipated breach, of the legislation. It is considered that the proposed approach whereby a person can raise a complaint with Access Canberra for their consideration and will provide a balanced approach to considering these matters. Currently, the Authority has no discretion to dismiss the application on the basis it is frivolous or vexatious, and cannot consider whether, having regard to Access Canberra's risk-based regulatory model, compliance action is appropriate. The Bill introduces discretion into the controlled activity order process. Discretion is considered necessary noting that compliance and enforcement activities are resource intensive, and those limited resources should be expended in a manner consistent with the risk-based compliance policy that has been endorsed by Government. This formalises the important risk assessment undertaken by Access Canberra in undertaking compliance functions on behalf of the Authority.	Access Canberra is not successful in coping with the current workload; this response is therefore an absurdity.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
25	The Committee recommends that the ACT Government undertake an independent review of planning decisions and new developments annually, to examine whether they are meeting the Bill's intentions.	<p><u>Noted</u> Internal audits of planning decisions (Development Applications) are regularly undertaken to make sure the performance of the Authority is evaluated, as part of compliance with its internal integrity framework. Similarly, the Authority, as part of its ongoing review, undertakes periodic review of its decisions. The Government considers it good practice that this continues.</p> <p>It would not be practical or feasible for an independent review to be undertaken of all planning decisions, including the approval of all new developments, which are already required to be decided by the independent Authority. This would effectively create a duplicate Planning Authority.</p> <p>It would be extremely costly to duplicate existing structures, processes and resources and the current administrative process of targeted audits is a better use of Government resources.</p>	<p>The wording in this response deems the <i>noted</i> as not agreed.</p> <p>Internal audits have the risk of being naval gazing with no reflection and/or evaluation leading to quality outcomes.</p> <p>If this is considered duplication, surely this then supports the view of the necessity of an independent review panel.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
26	<p>The Committee recommends that the ACT Government:</p> <ul style="list-style-type: none"> • introduce amendments to the Bill to include strong compliance and enforcement mechanisms available for development proposals that are likely to contribute to climate change through greenhouse gas emissions and that are likely to have a significant adverse environmental impact; and • ensure that after each major development is complete, an inspection is conducted to ensure that its impacts were as expected. 	<p><u>Noted</u> The Bill provides that a proponent must submit an expected greenhouse gas emissions statement for consideration. Relevant referral agencies, such as the Environment Protection Authority, or members of the community, may then provide advice on this statement.</p> <p>The compliance powers available to the Authority under the Planning and Development Act 2007 were generally fit for purpose and comprehensive and have been retained in the Bill.</p>	<p>The wording in this response deems the <i>noted</i> as not agreed.</p> <p>The response does not indicate any intention of listening to recommendation 26 or making any change from what already exists. No review or reform here.</p> <p>Currently the compliance powers are not enforced consistently, and this results in unsuitable consequences with an Act not fit for purpose.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE
27	<p>The Committee recommends that the ACT Government amend the Bill to ensure that minor and technical variations to the Territory Plan are defined so that they do not include policy decisions, and ensure there are publicly available guidelines about the interpretation of 'minor' or 'technical', and that these are genuinely minor and technical variations.</p>	<p><u>Noted</u></p> <p>Minor plan amendments or technical variations are required to be consistent with the policy of the Territory Plan and this has been the case since such variations were first introduced through the Planning and Development Act 2007.</p> <p>The Government considers the provisions in the Bill adequately outlines what a minor (technical) amendment is and is appropriate for this purpose.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 10.</p>

WCCC COMMENT

Minor and/or technical amendments are presently problematic. This will continue.

Provisions to support compliance with development requirements are referenced as Technical Specifications.

The main concern here is the adherence of compliance and any necessary enforcement. Additional information is required for District Specifications DS6. All development should have open community consultation and avenues for feedback and appeal. For example, Council does not support DS6: Weston Creek 1.8 Weston demonstration housing without community consultation.

In a public meeting organised by Council, a range of community opinions were put forward on this project. It therefore requires further consultation and transparent processes.

Further information is required in the Environment and Heritage specifications. Particularly tree protection, planting, and canopy.

Council notes the recent media comments by the Minister and Chief Planner have ignited a widespread debate in the community about parking. Council also notes that a revised Territory Parking Policy has been under development for a long time. Council, therefore, reserves its right to comment until the position is settled.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
28	The Committee recommends that the ACT Government amend the Bill to require that significant developments must achieve good planning principles including climate resilience.	<p><u>Agreed in principle</u></p> <p>The importance of climate resilience is recognised in the object of the Bill and Principles of Good Planning. The Bill specifically refers to the considerations of other ACT Government policies and strategies in the strategic and spatial planning processes established by the Bill, providing a direct connection and opportunity for integration of environmental and climate change policy into planning policy.</p> <p>Climate resilience will be a significant consideration and decision-makers will refer to these along with a wide range of other factors when making a decision in the outcomes-focused planning system.</p> <p>As required by Section 10 of the Bill, the draft new District Strategies and draft new Territory Plan have been developed having considered the object of the Bill and the Good Planning Principles as outlined in Section 10(1)(a) through to Section 10(1)(i) inclusive.</p>	<p>Environment resilience is far too important to receive an <i>agreed in principle</i> response.</p> <p>It is concerning that linkages to the human right to a healthy environment is non-existent in the Bill.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
29	The Committee recommends that the ACT Government amend the Bill to provide a clearer legislative link to ensure that the Territory Planning Authority ensures the principles of good planning are applied explicitly to planning and scoping documents including Development Applications, developer-led Territory Plan variations, and Environmental Impact Statements.	<p><u>Agreed in principle</u></p> <p>The Government considers the Bill to be clear that the principles of good planning must be applied to all planning and scoping documents.</p> <p>Section 10(1) of the Bill provides that a person must consider the object of this Act and the Principles of Good Planning in developing planning strategies, plans and policies. This will be included in the assessment templates for planning and scoping documents.</p>	<p>The Bill is not clear in the principles of good planning, and they are not protected in legislation.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
30	The Committee recommends that the ACT Government amend the Bill to contain a clear provision on housing affordability in principles of good planning	<p><u>Agreed</u></p> <p>The Government acknowledges the role planning plays in relation to housing supply. The Bill and regulations set the framework for a range of initiatives and programs that the Government is pursuing to provide housing and choice for the people of the ACT. Section 10(2) under the activation and liveability principles of the Bill provides for urban areas to include a range of high-quality housing options with an emphasis on living affordability.</p> <p>The Government will amend the existing provisions on housing affordability contained in the principles of planning in the Bill to explicitly include housing affordability in addition to living affordability.</p>	<p>Additionally, liveability needs to be included in the amendment.</p> <p>Zoning and transect characteristics need further explanation to ensure the elements valued by the community are preserved. The real risk here is densification without actual cost analysis.</p> <p>Hence, district strategies should be mandated in the Bill and protected in the legislation.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
31	The Committee recommends that the ACT Government amend the Bill to ensure greater clarification is provided to terminology such as 'planning outcome', 'outcomes focussed' and 'good planning outcome', as well as defining 'substantial public benefit' in paragraph 187(2)(ii).	<p><u>Noted</u></p> <p>The Bill establishes the framework for the planning system. The hierarchy of documents and policies required under the Bill (e.g. the Territory Plan and District Strategies) give effect to the outcomes sought through the planning system.</p> <p>A good planning outcome is defined by the nine (9) planning principles set out and defined in Section 10(2).</p> <p>The Committee has not articulated why additional definitions from the nine (9) planning principles (and definitions) are required. Defining these further could create confusion and misunderstanding. Where terms are not defined in the Bill, the ordinary meaning is used. It is not practical to define every term used in the Bill, particularly where there is an established ordinary meaning.</p> <p>The Bill provides further clarification on terminology. For example, Section 10 provides that a good planning outcome is achieved where a person considers the object of the Act and the Principles of Good Planning.</p> <p>The Government does not support further defining these terms within the Bill but will investigate any opportunities to provide clarification on the above information.</p>	<p><i>Noted</i> does not in any way suggest agreement. This is particularly galling considering the amount of community input provided.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
32	The Committee recommends that the ACT Government ensure that the use of terminology referencing community consultation is consistent throughout the Bill.	<p><u>Agreed</u></p> <p>The Government will amend the Bill to make sure the reference to 'community consultation' is amended to 'public consultation' to align with the terminology used in the Bill.</p> <p>It should be noted the terms 'consultation' and 'participation' are not interchangeable and have different meanings within the Bill.</p>	<p>It is also noted that public consultation has been significantly reduced within the Bill which will lead to a detrimental impact on final outcomes.</p> <p>A major flaw in the Bill is the lack of consultation.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
33	The Committee recommends that the ACT Government amend subclause 215(1) of the Bill to include '(d) has undergone sufficient community consultation'.	<p><u>Not agreed</u></p> <p>The Government does not support the inclusion of 'has undergone sufficient community consultation' in Section 215(1). The use of the term 'sufficient' is not clear and has not been defined by the Committee.</p> <p>The Government considers that the legislation as drafted provides for sufficient community consultation (using the ordinary meaning of the term). Section 215 provides that prior to making a Territory Priority Project declaration, the Minister provides at least 15 working days for the community to provide comments about the proposed declaration. In addition, any consultation must be undertaken in accordance with the principles of good consultation as set out under Section 11 of the Bill.</p>	<p>Consultation in the Bill is lacking and not at all sufficient.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
34	The Committee recommends that the ACT Government consider amending subclause 215(2) of the Bill to ensure that a Territory Priority Project declaration is a disallowable instrument. In making this recommendation, the Committee notes a change of this type could be considered a significant change in planning practice.	<p><u>Noted</u></p> <p>The Government supports the continued use of a notifiable instrument for a Territory Priority Project declaration. This provides an appropriate balance between scrutiny, transparency and certainty to the process and timeliness of projects. The responsible Minister must make a statement to the Legislative Assembly following the making of the declaration, which will be available to Legislative Assembly and public scrutiny.</p> <p>The Government acknowledges the rationale for the recommendation and will consider options prior to debate of the Bill that provides a pathway forward while also providing for a sufficient level of certainty.</p>	<p>Council strongly supports recommendation 34.</p> <p>This is one of the most critical issues within the Bill.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
35	The Committee recommends that the ACT Government ensure First Nations peoples are meaningfully consulted in the ACT Planning System Review and Reform Project.	<p><u>Agreed</u></p> <p>The Government consulted with First Nations peoples on the ACT Planning System Review and Reform Project through the Dhawura Ngunnawal Caring for Country Committee and the Aboriginal and Torres Strait Islander Elected Body.</p> <p>The Government will make sure that First Nations peoples continue to be consulted with during the implementation of the ACT Planning System Review and Reform Project.</p>	Noted. With consideration of the recent Ngambri people's agreement, this statement needs review.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
36	The Committee recommends that the ACT Government explore training for staff in the Territory Planning Authority and statutory planning team to attend government-funded immersion training and learn how to better work with First Nations people in the ACT and how to view the land as First Nations land; and that Government develop guidelines for consultation with First Nations, which should be culturally safe and developed through consultation with First Nations people and communities.	<p><u>Agreed in principle</u></p> <p>The Government is committed to working effectively with First Nations people across all areas of engagement, including planning, and is currently exploring training opportunities for the whole of government.</p> <p>The Government currently has guidelines and protocols for engaging and working with First Nations peoples. The Ngunnawal Traditional Custodians are consulted on the ACT Planning System Review and Reform Project through the Dhawura Ngunnawal Caring for Country Committee and First Nations peoples and more broadly through the Aboriginal and Torres Strait Islander Elected Body.</p>	<p>With consideration of the recent Ngambri people's agreement, this statement needs review.</p> <p>It is hard to believe that this recommendation is not already in place.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
37	The Committee recommends that the ACT Government amend the objects of the Bill to recognise the cultural and spiritual connections held by First Nations people in the ACT and amend clause 9 to elevate considerations of cultural heritage	<p><u>Agreed in part</u></p> <p>The Government will amend the object of the Bill to recognise the cultural and spiritual connections held by First Nations people in the ACT.</p> <p>The Government does not support amending Section 9 to elevate considerations of cultural heritage. Each ecologically sustainable development principle listed in Section 9 must be considered on its merits. The principles have equal weight and are not listed in any order of priority or importance.</p>	With consideration of the recent Ngambri people's agreement, this statement needs review.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
38	The Committee recommends that the ACT Government amend the Bill's objectives to include reference to protection of biodiversity and climate change.	<p><u>Agreed in principle</u></p> <p>Part 2.1 sets out the object of the Bill and the key elements that must be considered in achieving the object. These include conserving biological diversity and ecological integrity and a net-zero greenhouse gas future using integrated mitigation and adaptation best practices. The Government considers the current objects sufficiently capture and provide for the protection of biodiversity and climate change.</p>	<p>Council strongly disagrees with this response.</p> <p>Recommendation 38 must be enforced.</p> <p>It is concerning that the human right to a healthy environment is non-existent in the Bill.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE
39	The Committee recommends that the ACT Government amend the objects of the Bill to include climate change and climate resilience so that these are mandatory considerations for all decisions made, and powers and functions exercised, under the Bill.	<p><u>Noted</u></p> <p>Part 2.1 sets out the object of the Bill and the key elements that must be considered in achieving the object. These include a net-zero greenhouse gas future using integrated mitigation and adaptation best practices and creating and maintaining resilient communities and economies.</p> <p>As outlined in the responses to recommendations 18 and 19, Section 10 requires that the object of the Act must be considered when making planning strategies, plans and policies that underpin the planning system.</p> <p>The Government considers the current objects, principles and important concepts contained in Chapter 2 of the Bill provide sufficient coverage, for consideration to be given to climate change and climate resilience.</p>

WCCC COMMENT

Council disagrees with this response. Recommendation 39 must be enforced.

Weston Creek Community Council (WCCC) has long advocated for the “human factor or condition” to be explicit in legislation. Human health and well-being should be at the forefront of decision making. This would be in alignment with the United Nations General Assembly adopting a historic resolution, declaring access to a clean, healthy, and sustainable environment, as a universal human right.

Council has the expectation that a definition provides a clear frame for thinking and decision making. The precise wording is important so that any definition or legislation:

- enables the human condition to be at the heart of decision making
- engenders trust in the system
- provides equal opportunity
- is a solid mechanism to resolve disputes
- and is a plan for the future.

Council supports a specific definition approach, specifying the principles as outlined on page 11 of the 2022 Rights to A Healthy Environment discussion paper:

A specific definition could specify duties relating to a healthy environment as follows: ‘Everyone has the right to a safe, clean, healthy and sustainable environment, including: clean air; a safe climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems.’

It is of immense importance is that any wording emphasizes:

- the Government’s obligation and responsibility to act
- provides guards for economic policies and business models
- emphasizes the need for Government and businesses to act rather than be discretionary

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
40	The Committee recommends that the ACT Government amend the Bill to include a clearer and stronger definition of 'ecologically sustainable development', in line with the common national and international definitions as well as the recommendations set out in the Environmental Defenders Office's submission to the draft Bill.	<p><u>Agreed in principle</u></p> <p>The definition of the term 'ecologically sustainable development' in the Bill retains the existing elements of the term 'sustainable development' from the Planning and Development Act 2007, while also incorporating contemporary ideas, with inspiration drawn from Section 3(2) of Queensland's Planning Act 2016 and the 2030 United Nations Agenda for Sustainable Development (national and international definitions).</p> <p>The definition has been amended to incorporate reference to the integration of economic considerations rather than achieving economic growth and to enhance the protection of ecological processes and natural systems at local, territory and broader landscape levels to provide consistency with the other ecologically sustainable development principles.</p>	It is of great concern that the poor justification used in this response to recommendation 40 uses the outdated Planning and Development Act 2007 - which is supposedly being reviewed!

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
41	The Committee recommends that the ACT Government amend the Bill to reinsert Strategic Environmental Assessments into the Bill, or it be amended to include a trigger to assess listed ACT-threatened species under the Nature Conservation Act 2014 in parallel with a Strategic Environmental Assessment as required under the EPBC Act.	<p><u>Noted</u></p> <p>The strategic environmental assessment process has not been used, except for the review of the current Territory Plan. The process is not considered to be an effective process for assessing potential environmental implications of planning policy changes, and that assessment of broad environmental impacts is appropriately dealt with through various existing processes applied at different scales of the planning system, including:</p> <ul style="list-style-type: none"> • consideration of environmental and sustainability principles and outcomes through strategic and spatial planning processes, including recognition in the object of the Act and principles of good planning • the environmental impact assessment process for development proposals • the strategic assessment process under Part 10 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth). <p>Further, the removal of this process will be offset by increased consideration of environmental and sustainability outcomes in an outcomes-focussed planning system. Strategic and spatial planning will be informed by principles of good planning requiring consideration of natural environment and sustainability outcomes, ecological sustainability, and wellbeing and liveability.</p> <p>The Government considers there is sufficient coverage to assess listed ACT-threatened species under the Nature Conservation Act 2014, and a specific assessment trigger is not required.</p> <p>Further information was provided to the Committee on strategic environmental assessments following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 11.</p>	<p>Existing processes are not sufficient to protect the environment, threatened species or the impacts on humans.</p> <p>There is not confidence that any environmental and/or sustainability considerations will be consistently addressed.</p> <p>If recommendation 41 is not agreed to, it could be argued that only lip service is being made to climate issues.</p> <p>Also, if Assessments are not included in the Bill, there is no assurance of any compliance, enforcement or protection of such issues and the impacts.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
42	The Committee recommends that the ACT Government amend the Bill to include reference to 'cumulative environmental impact' in the planning principles and define 'environmentally sound'.	<p><u>Agreed in part</u></p> <p>While the Government considers these impacts are sufficiently covered under the Bill and the planning strategies, plans and policies, in consideration of the Committee's recommendation, the Government will amend the Bill to include reference to 'cumulative environmental impact' in the Principles of Good Planning. The Bill includes natural environment conservation principles and sustainability and resilience principles which taken together are intended to minimise environmental impacts and promote healthy and resilient ecosystems and the maintenance of ecosystem services and amenity.</p> <p>The ordinary meaning of 'environmentally sound' has not been amended as the Committee has not provided any guidance to a proposed definition that would be more useful than the ordinary meaning.</p>	<p>Environmental issues are not sufficiently covered under the Bill, let alone the cumulative impacts.</p> <p>The response given here demonstrates the complete lack of good will, laziness, and intellectual vacuum to the recommendation.</p> <p>Council expects that this will be heavily debated in the Assembly.</p>

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
43	The Committee recommends that the ACT Government amend the Bill to include 'key threatening process' as a trigger for an Environmental Impact Statement in Chapter 6 of the Bill.	<p><u>Agreed</u></p> <p>The Government will amend the Bill to include 'key threatening process' as a trigger for an Environmental Impact Statement.</p>	Council would argue that Environmental Impact Statements should be mandated but with levels of consideration of the extent of the investigation.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
44	The Committee recommends that the ACT Government amend the Bill to provide a stronger link to existing environmental legislation such as the Nature Conservation Act 2014.	<p><u>Agreed in principle</u></p> <p>The Bill provides a strong link to existing environmental legislation. Under the Bill, all existing Environmental Impact Statement triggers relating to threatened species will remain. The Government considers that an Environmental Impact Statement would still be required for a development on Territory land (as opposed to National or Designated land) that impacts on threatened species.</p>	All Government policies, guidelines and legislation should have strong links within the Bill.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
45	The Committee recommends that the ACT Government amend the Bill's definition of 'protected matters' to include matters protected under the Nature Conservation Act 2014.	<u>Agreed in principle</u> The Bill provides a strong link to the Nature Conservation Act 2014. The provisions of the Act must be considered by decisionmakers under the Bill.	To be put beyond doubt, recommendation 45 should be agreed to not <i>agreed in principle</i> .

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
46	The Committee recommends that the ACT Government review offsets policy to ensure it is current and the planning system only allows offsetting in limited circumstances and in line with the best practice science-based principles.	<u>Agreed in principle</u> The Government has commenced work on reviewing offsets policy. The review will consider the circumstances in which offsetting should be permitted in line with the best practice science-based principles.	<ul style="list-style-type: none"> • 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

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
47	The Committee recommends that the ACT Government appoint a Government Landscape Architect to provide advice to the ACT Government and explore the introduction of a landscape policy for the Territory.	<p><u>Not agreed</u></p> <p>The Environment, Planning and Sustainable Development Directorate employs a range of expertise to support the delivery of its business, including qualified landscape architects. The National Capital Design Review Panel membership is selected from a pool of experts identified for their skills, expertise and record of achievement in one or more fields relevant to planning, design and development. This includes qualified eminent landscape architects.</p> <p>The Government does not support the Committee's recommendation to establish a specific 'landscape policy' in the ACT. Consideration of landscape is best set through a range of policy documents for the ACT, including the ACT Planning Strategy, Canberra's Living Infrastructure Plan and new District Strategies. The District Strategies will be a key element of the new contemporary and best practice planning system that keeps our valued urban form and connection to the natural landscape. The blue-green network driver focuses on protection and enhancement of vegetation, nature reserves, open space, water elements and cultural heritage elements to provide the setting for a city 'in the landscape.'</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 6.</p>	This is a very disappointing response to recommendation 47, demonstrating any actual commitment to new thinking.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
48	The Committee recommends that the ACT Government establish a Social Planning Committee or a Social Planning Unit	<p><u>Not agreed</u></p> <p>The Authority employs social planning expertise to support its functions, and this will continue. The Government supports an integrated approach, where staff with this expertise are deployed in a range of business units, to support up-skilling of all staff and avoid siloed behaviour.</p> <p>This information was provided to the Committee following the Inquiry into the Planning Bill 2022 hearing which was held on 7 December 2022 as part of QON 16.</p>	Another very disappointing response to recommendation 47, demonstrating any actual commitment to new thinking.

#	RECOMMENDATION	GOVERNMENT RESPONSE	WCCC COMMENT
49	The Committee recommends that the Assembly consider this report along with additional comments before debating the Planning Bill 2022.	<p><u>Agreed</u></p> <p>Responding to this recommendation is more of a matter for the Assembly than the Government. The Government appreciates the time that the Standing Committee, and the Assembly, has spent on consideration of these important changes to our planning system</p>	Council recommends that Government reconsider and republish its responses before debating the Bill as no real progress in reform has been achieved.