LAKE BURLEY GRIFFIN GUARDIANS INCORPORATED

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LBGG Submission: ACT Planning System Review and Reform

Lake Burley Griffin Guardians (the Guardians) is a non-profit community group committed to safeguarding one of Canberra's greatest treasures, the open space of Lake Burley Griffin and its lakeshore landscape setting. However, the proposed planning reforms relate to those areas that are the responsibility of the ACT Government near to, adjacent and within our areas of concern and, of course, provide the greater context for these areas, so we feel obliged to comment.

The following submission focusses on key aspects of the proposed reforms.

In summary, the Guardians recommend (in alignment with the sentiments of an article by Ben Oberdorf) that the draft Bill be withdrawn and the ACT Government appoint an independent body to review the ACT planning processes to create an improved process to:

1. Avoid one entity or body, especially the Chief Planning Officer and Planning Minister wielding too much power;
2. Help reduce mistakes and prevent improper behaviour in ACT Government entities;
3. Ensure input from all relevant entities in a timely and appropriate way;
4. Ensure adequate and timely consultation with community groups.

Quoted from *The Act Draft Planning Bill – An Aberration* (canberraplanningactiongroup.com) accessed 9 June 2022

It is unclear and suspicious that in the **Object of the Act** 'prosperity' is mentioned as an aspect of the object of the Act. Planning should be about the other indicated aspect but not about material wealth if that is what is implied here. It certainly shouldn't be about impoverishing anyone, increasing economic disadvantage or inequality, but 'enhancing prosperity' might be read as a convenient insert here to ensure increased profits for, say, developers and is inappropriate as an aim for the Act. Wealth creation may be a side effect of good planning in rising property prices for all but it is inappropriate as a planning object in itself in our view. Similarly, 'prosperous' used elsewhere should be removed from the text.

An object of the Act is said to be Ecologically Sustainable Development – This is described to include 'the achievement of economic development'. It would be preferable that this contentious object be replaced with a less challenging, less neo-classical concept such as 'economic sustainability' and/or define the concept required in a more balanced form of words (as per the EPBC Act):
'… effectively integrate both long-term and short-term economic, environmental, social and equitable considerations'.

Under Objects and in the context of the 'protection of ecological processes and natural systems', including 'appropriate valuation and pricing environmental resources' - Whilst some progress has been made in this area, this work is still highly problematic and is not an absolute in terms of including the natural environment in standard economic evaluations. Considerable caution needs to be used here if it is thought that these externalities can be simply and satisfactorily valued/priced to allow their inclusion in assessments, say, of the desirability of certain developments.

A new planning authority is proposed to manage the new scheme - the Territory Planning Authority, an independent decision-maker, led by the Chief Planner with increased functions to promote high quality design and good planning outcomes (with no more Ministerial Call-In Powers) but increased powers for the Minister.

This rearrangement of the present roles with attendant increase in control at the top, and the accompanying decrease in community consultation is a worrying approach for the Guardians, as it increases authoritarianism in such a critical area for the citizenry as planning which affect so many spheres of Territory life.

The new planning scheme is **outcome-focussed**, rather than being based, as in the current scheme based on prescribed technical rules. It is said to emphasise quality, results and performance and have new objects: liveability and prosperity; ecologically sustainable; well-being of residents; effective, efficient, accessible and enabling; outcomes focussed; and community participation. These are stated elsewhere in the published explanatory documentation as including wellbeing, health, recreation, employment, housing, environment and transport; and also elsewhere in these as being the main priorities of the wellbeing of residents, liveability and prosperity. Also, it is said they will recognise the importance of the knowledge, culture and traditions of the traditional custodians, the Ngunnawal people. Mandatory requirements are still possible it is noted for, say, maximum building heights, site coverage or setbacks in residential zones to control unsuitable developments.

However, the supporting Bill and the Regulations do not define 'outcomes'. They are left as nebulous concepts to be defined and used by bureaucrats and developers, presumably, variably or at least, possibly, for each development.

This is 'throwing the baby out with the bathwater' in our view. To go from much greater certainty in the present scheme with its here maligned rules to an undefined concepts scheme that will be used in the new to judge developments, is extremely unwise. It gives considerably more flexibility for developers and decision-makers to, respectively, submit and approve developments that would not be approved under the current system at considerable cost to the order, such as it is, and consistency of the current approval system. It would be better to improve the current system than replace it with this proposal. The number of current approvals allowed that are inconsistent with the rules should be reduced not create a new system to throw out those inconvenient rules.

The Guardians suggest that the proposal to change the planning of the ACT to an outcomes-focussed scheme is a seriously retrograde step and should be avoided.

The Bill, to effect the new reforms for **Strategic and Spatial Planning** includes 'Principles of Good Planning' which must be taken into account in this area of planning. These are: integrated delivery principles; long-term focus principles; urban regeneration principles; high quality design principles; activation and liveability principles; natural environment conservation principles; investment facilitation principles; and sustainability and resilience principles.

It is suggested that it will be easier for the community to influence planning and outcomes, such as by the community commenting on the development outcomes in the development application process.

The ACT Planning Strategy may include other government strategies and policies, if appropriate. This high order and important guiding document should be available for community consultation.

Whilst District Strategies have to include community consultation in the drafting, Estate Development Plans do not appear to include community consultation in the drafting. It should not only be allowed prior to it being added to the Territory Plan.

The validity of amendments or provisions to the **Territory Plan** can only be challenged after three months of their commencement. Why is the validity of a provision of the Territory Plan not to be questioned in any legal proceeding only because the major plan amendment that inserted or amended the provision was inconsistent with the planning strategy or a district strategy? This does seem a fundamental flaw with such an amendment, particularly a major amendment.

Major Amendments to the Territory Plan are proposed to include a provision for proponent-initiated amendments but there is no, as there should be, provision to allow the additional 'community-initiated amendments'.

Under Minor Amendments to the Territory Plan it is uncertain why an inconsistency with the National Capital Plan does not require consultation (even Limited Consultation) as this scenario appears to be quite significant.

The Bill introduces **'Principles of good planning'** in an effort to improve the quality of development. Here is found the concept of 'Activations'. These seem to be described as providing for 'active' travel, economic, social and cultural activities, and active lifestyles. This is positive, however, 'activations' for the sake of having activations to make it appear, for instance, as an area that is vital, are undesirable particularly if they are motivated for economic reasons and should be discouraged. 'Activations' might best be allowed to appear and grow more organically and any proposals for them, particularly of a commercial kind, need to be assessed carefully for their appropriateness rather than being generally encouraged on principle.

Also, here included are, **'Investment facilitation principles'** by the identification of the 'strengthening the economic prosperity of the Territory' as principle, whilst appearing to be a sound insertion of economics and prosperity into planning in this way, is again giving licence, if some care is not taken, to possibly encourage profits (to Government or the private sector), and potentially override/outweigh as a motive for change and development, other more desirable social, cultural or environmental qualities valued by the community.

Similarly, the **'Urban regeneration principles'** included here are admirable so as to reduce Canberra's footprint but this regeneration should not be so pursued or be regarded as paramount. This might have the effect that valued qualities of the capital or sound policies, for instance, to minimise climate change, improve the tree canopy, for ESD purpose are lost, abandoned or compromised. Urban regeneration can still be pursued even if less absolute, so that there is also allowed limited and controlled expansion of the Canberra footprint with careful environmental and other controls. It shouldn't be allowed, for instance, to compromise heritage and other existing, or community indicated, other desirable protections of the urban fabric or indeed the notion of the Bush Capital.

The words 'mostly' and 'as appropriate' as qualifiers of the degree and type of urban regeneration here could perhaps be more defined and expanded.

The Bill will introduce **'Principles of Good Consultation'**. Their proposed development via critical Guidelines for Good Consultation should be put out for community consultation in the first instance as should any subsequent adjustment, rather than under the proposed and (ironic) development process without consultation on the very document to manage it.

The Bill introduces **Territory Priority Projects** with few regulatory constraints, which is the point, of course, but this concept of providing fewer problems and delays for such identified, apparently important projects is inappropriate and this concept of Territory Priority Projects, including light rail, is rejected by the Guardians. Chapter 8 of the Bill should be removed. There is no need for any projects to be fast-tracked and so be immune from the normal decision-making checks and balances, whether these be environmental or otherwise, to which other/all developments are subject. They exist to protect those aspects of the Territory valued by the community and need to be safeguarded by the planning processes despite any frustrations of developers and politicians.

If there are to be such Priority Projects then the exemptions listed should not limit the community from challenging them. They should be allowed to be tested by the community, including by merit in ACAT, to see if they warrant this privileged status and so the Third Party Exemptions at Part 7.2 should be limited. The following identified exemptions are highly inappropriate and should not apply as they unnecessarily and severely limit the right of third parties from an ACAT review of Territory Priority Projects developments on land in various critical areas:
(a) the city centre; or
(b) a town centre; or
(c) an industrial zone; or
(d) the Kingston Foreshore; or
(e) the University of Canberra site

plus those type of demolition items listed in Column 1 at 4 Column 2.

The leasing system should not be in any respect as proposed to now be the responsibility of either the CRA or the SLA. These are development agencies. To ensure there are no conflicts of interest or apparent conflicts of interest, and arrangements are transparently equitable and fair, lease arrangements should be retained in Planning.

Changes to Territory Plan, including an **Exempt Development Regulation** and simplified processes to put Government policy into the Territory Plan. This will be developed with community consultation (on the draft plan later in 2022) and expert input, and the ACT Government Executive and ACT Assembly approval. However, it is a concern that Government policy will be inserted unless a definition is included so that 'policies' the Government claims may be included when they are not actually that. How they are defined to be such is very important before they are inserted into ACT planning.

Section 186 of the Bill attempts to bind the Commonwealth to finalising a referral within a certain period is not possible given the limits of ACT law to bind the Commonwealth, so the potential consequence of approving the development (under s 180) if the Commonwealth does not meet the timeline is invalid. This section is currently inappropriate as, in these circumstances, as an attempt to

negate a Commonwealth statutory process. The ACT development decision should be delayed until the Commonwealth process is complete.

In the Bill at Overview of EIS process s100(1) there is a **typographic error**: '… the territory planning authority for an EIS scoping document to identity (sic) the matters to be addressed in the EIS'.

Yours sincerely

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Vice Convenor
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