



Submission to the ACT Planning and
Land Authority's

Planning System Reform Project



July 2005

About ACTCOSS

ACTCOSS acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

Contact Details

Phone: 02 6202-7200
Fax: 02 6247-7175
Mail: PO Box 195 Civic Square ACT 2608
E-mail: actcoss@actcoss.org.au
WWW: <http://www.actcoss.org.au>
Location: Jamieson House
43 Constitution Avenue
Reid ACT 2612

Director: Ms Ara Cresswell
Policy Officer: Mr Llewellyn Reynders
July 2005

© Copyright ACT Council of Social Service Incorporated

This publication is copyright, apart from use by those agencies for which it has been produced. Non-profit associations and groups have permission to reproduce parts of this publication as long as the original meaning is retained and proper credit is given to the ACT Council of Social Service Inc (ACTCOSS). All other individuals and agencies seeking to reproduce material from this publication should obtain the permission of the Director of ACTCOSS.

Introduction: Social Equity and the Planning System

ACTCOSS believes that a fair and equitable planning system is an essential element in reducing disadvantage and creating a respectful, diverse and cohesive community. Social scientists, policy makers, and advocates of progressive social policy, such as ACTCOSS, are becoming increasingly interested in the spatial elements of disadvantage, and the social equity issues raised by the form of the built environment.

The Directions Paper mentions this in passing: specifically, it states that the planning system should enable the objective of “recognition of the opportunity for planning to contribute to social equity” (p.5). ACTCOSS is disappointed that this objective is not more actively pursued in the reform process. Social equity should not simply be a “recognised opportunity”, but a central goal to be actively achieved by the planning process.

The goal of social equity is not further developed in the planning reforms. There is no information that further extends what this opportunity might be or what systems and methods might be used to achieve it. ACTCOSS would encourage the Authority to further explore, define and implement this objective in this and future planning processes.

Affordable Housing

Central to any consideration of social equity should be the provision of low-cost housing in the ACT. There is no mention of the provision of affordable housing stock as an objective of the planning process. In contrast, the Directions Paper gives the objective of pursuing “an effectively functioning property market with clear rules to support economic opportunities and development”. Yet, there is no indication of what ACTPLA considers to be “effective”, nor for exactly whom is to the recipient of these “economic opportunities”.

ACTCOSS considers an “effective” property market to be one that caters for Canberrans of all income-types, including those on low incomes or reliant on social benefit payments. ACTCOSS would hope that the planning system would seek to provide “economic opportunities” for people experiencing disadvantage, as well as to assist and encourage social cohesion and mobility. ACTCOSS would encourage the Authority to incorporate more specific mention of the groups its seeks to assist in developing planning policies. In particular, the Authority should explore, promote and implement appropriate planning systems to encourage and increase investment in affordable housing.

ACTCOSS also notes that planning documents, such as the City West Master Plan, are increasingly referring to the provision of affordable housing. However, there is no accepted definition in any planning instruments about what exactly is meant by the term. This makes any reference to affordable housing unclear, and the worthy intentions of providing affordable housing can quickly become circumvented if the term is simply a catch-phrase, rather than having a distinct and accountable meaning in the planning rules.

Direct Grant of Lease

ACTCOSS supports the retention of the system of leasehold land in the ACT, which we understand is not the province of the ACT Legislature to amend in any case.

ACTCOSS has a particular interest in the continuation of the availability of direct grant leases. It is appropriate that the criteria for eligibility and price discounts be publicly available, with any review to focus on the social need for community facilities, and the appropriate organisations to which these would be granted. In particular, ACTCOSS supports the suggestion some community service providers “are not-for-profit organisations that are supported by subsidies and it may be appropriate for a charging scale to take these factors into account” [Technical Paper 1 (TP1), p.15]. However, any review of the criteria for eligibility should be subject to extensive consultation, including with community organisations.

ACTCOSS supports the continuing practice of including definitive descriptions of the intended purpose of concessional leases, and would not support broadening lease purpose clauses to allow alternative uses, particularly if this could jeopardise the provision of the primary intended use of the lease.

In particular, the Authority should be extremely cautious in proposing that concessional leases are granted to for-profit organisations, as well ensuring that the leases have the capability of being resumed or otherwise returned to the Territory if the desired use is no longer available, or alternatively transferred to an appropriate substitute organisation that is capable of fulfilling community needs for that site. For instance, organisations that no longer require community leases should not be enabled to offer them for sale at a profit, and the Authority should only allow the transfer of a concessional lease if it has determined that it will continue to fulfil a worthy community need.

ACTCOSS has some concerns about the proposal to consolidate the granting process for concessional leases to ACTPLA alone. While there may be important benefits to this, including ensuring some clarity and transparency in the lease granting process, there is also concern that the Authority may not have the appropriate knowledge in determining the most suitable candidate to which to offer community facility land, and this expertise may reside in other agencies. If the provision for granting direct leases is centralised within ACTPLA, the Authority needs to ensure that it undertakes appropriate consultation with the other agencies, including both government and non-government organisations.

Broader Lease Purpose Clauses

ACTCOSS raises some concerns with the proposal “that leases first granted through processes other than direct or restricted grants processes include a larger range of permitted uses, in circumstances where market forces should be a key factor in determining the mix of uses with a multi-use lease.” (TP1, p.10). However, it is not clear when exactly this situation is. ACTCOSS would submit that market forces have been extremely unhelpful in achieving the goal of affordable housing, and further reliance on this mechanism places future housing affordability in doubt.

Similarly, the first Technical paper recommends “that where a new lease provides for a range of uses and has been granted at full market value, there should be a single expression of the overall permitted intensity of development (such as gross floor area) in the lease”. This may cause a problem where, for example, a lease or zoning permits the construction of mixed usage developments, such as residential and commercial. It could reasonably be argued that the ground floor should have commercial development to maintain the commercial character of the area. Allowing residential-only buildings in the middle of a commercial area may tend to break up the character of the business district. Specifying additional development controls in the lease may be of use in this (and other) circumstances.

Equally, there is a cogent argument about the location of residential facilities in close proximity to commercial areas in mixed-use developments, particularly in relation to noise complaints. For example, recent media attention has been given to the tensions between a Civic nightclub and nearby residential apartments. It is constructive to note that this co-location may lead to an erosion of the ability of young people to have reasonable access to public space and cultural venues, and that additional consideration should be given to such developments in future.

ACTCOSS continues to have reservations about broadening the scope of lease purpose clauses without individual regard to location and usage.

Infrastructure charges

ACTCOSS supports the recommendation to “conduct a detailed investigation of the options for infrastructure charging”. ACTCOSS would posit that the current change-of-use charge is not returning adequate revenue to the Territory to pay for necessary urban alterations accompanying private developments, let alone to provide for the broader social infrastructure and services that are required to maintain the value of these investments. ACTCOSS would encourage the Authority to take a broad view of the social and environmental costs that born as a result of development, with a view to ensuring that these are compensated appropriately.

Territory Plan Zones (Land Use Policies)

Technical Paper 2 (TP2) suggests a consolidation of the number of primary zones in the Territory Plan. The Paper suggests that the current sixteen land use policy areas be condensed down to a smaller number of broader land use policies, such as the six primary zones in the NSW model, which could be further subdivided into various “precinct” zonings. ACTCOSS raises the concern that this model may amalgamate “community facility” zoning with a number of other zones, such as “municipal services”. ACTCOSS would strongly oppose such a change.

This type of alteration may, over time, significantly alter the usage patterns of community facility land. In particular, ACTCOSS is concerned that well-located community facility land may slowly be converted to other purposes, with the result that community organisations are faced with the prospect of gradually being relocated to more remote locations, or alternatively, being forced to pay higher rental premiums in order to access well-located community space in some other zoning (e.g. commercial). ACTCOSS is already extremely concerned at the reduced amenity and footprint of community facilities in Civic, both in vicinity of section 84 and in City West. Amalgamating community facilities zones into a broader use zoning would further compromise access to low-cost, well-located premises.

Planning Rules and Codes

ACTCOSS is concerned by proposals to limit the amount of planning rules retained in the Territory Plan, and transfer a large portion of these rules into codes and guidelines.

TP2 suggests that the status of rules could be retained by transferring them to the relevant residential code “provided it was clearly labelled as a mandatory rule rather than a performance measure ... [however,] if this were to be altered to a matter for careful consideration only (as for a planning guideline) its mandatory status could be quickly altered” (TP2, p.37). ACTCOSS would add a greater concern that taking mandatory controls out of the Territory Plan removes community scrutiny and legislative oversight from the planning process.

Currently, proposals to change mandatory protections in the Territory Plan must go through the Draft Variation Process, with its subsequent levels of community consultation. In addition, it remains a disallowable instrument and can be disallowed by the Legislative Assembly. Planning codes, guidelines and master plans have no such status, and could be quickly altered or undermined without this protection. Changes to mandatory criteria should continue to be debated widely and the elected representatives of the community in the Legislative Assembly should remain the final arbiters of whether the change is in the best interests of the community.

Master Plans and Neighbourhood Plans

ACTCOSS raises similar concerns about the proposal that Master Plans and Neighbourhood Plans “cease to be matters for consideration in development assessment” (TP2, pp.32-33). While it is understood that the complexity of the various planning instruments is of concern, attention needs to be given to the affect this may have on participation in developing such plans in the first instance. Removing any direct effect of the plans will produce greater uncertainty about whether they will make the final “leap” into the development approval process. If the outcomes of these planning processes do not make this transition, then communities may lose confidence in ACTPLA consultation processes.

The Plan Variation Process

TP2 proposes that the process of referring draft variations to an Assembly Committee be altered to “allow the Minister for Planning to decide whether a draft Territory Plan variation is to be referred to the relevant committee, with a further provision that the Legislative Assembly will have the power to direct such referral, subject to disallowance” (TP2, p.38). ACTCOSS opposes this proposal.

The proposal misunderstands the separation of powers between the Legislature and the Executive under the principles of the Westminster system, as well as the operation of oversight systems. Assembly Committees are subordinate to the Legislature, not the Executive. It is inappropriate for a member of the Executive to be determining the content of Committee deliberations, as this would mean that the Committee begins to become subordinate to the determinations of the Executive. Furthermore, the whole purpose of referral to an Assembly Committee is for the purpose of additional oversight over the decisions of Government. This oversight function is severely compromised, if not entirely corrupted, if the oversight agency can effectively be prevented from inquiring into potentially controversial changes.

That is not to say that there should be no provision for non-controversial changes to bypass the Committee. However, as the Committee is an organ of the Legislature, only the Legislative Assembly or the Committee itself should be empowered to determine whether this should occur.

ACTCOSS is disturbed by this proposal for the further reason that it could set a precedent for other referrals to Committees. If the Executive can determine which Draft Variations should be considered by an Assembly Committee, then why should it not make the same decision about which Bills should be examined by the Scrutiny of Bills Committee, which Auditor-General's Reports should be considered by the Public Accounts Committee, or which Annual Reports should be investigated.

Adopting track-based assessment

Technical Paper 3 (TP3) proposes to "remove the requirement for new single residences in greenfield sites ... to obtain development approval" (TP3, p.10) ACTCOSS queries this proposal. Despite the suggestion that "the approval process does not alter the proposed design" (ibid.), this is not to say that the level of code compliance may result from the fact that *there is an approval process*. The approval process in itself is a guide to prospective builders, particularly owner-builders, indicating that they need attend to the correct procedures in designing and building their homes. Removing this prompt to ensure building design is compliant may produce less satisfying results.

The Paper proposes that instead of an approval process, building certifiers will be asked to make a judgement about whether "the proposals were inconsistent with relevant criteria or not within the class of exempt matters". However, it is unclear whether the fact that builder certifiers are private businesses will affect their ability to give a "frank and fearless" assessment of code compliance. A certifier that was too concerned about the level of consistency with the relevant codes may soon find that their offers of work begin to decline. Alternatively, some less than scrupulous certifiers may turn a blind eye to good customers, trying their luck against the compliance regime.

Of course, ultimately a poor certifier could be prosecuted – if the Authority discovered the “error”. Even if this is the case, the Authority may not discover the mistake until the dwelling had already been constructed. This would mean that not only would the Authority have to go to the expense of prosecuting the building certifier, but the owner would also have to sue the certifier for damages, particularly if a dwelling was constructed that then had to be demolished because it did not fit the code. This becomes of even more concern if the property had been purchased by another owner since construction, or is subsequently leased for rent. Furthermore, when these faults are not discovered, ACTCOSS is particularly concerned that poorly built houses may end up being purchased or leased by low-income earners, who end up living in accommodation that exposes them to unacceptable risk.

Community Consultation on Planning Policy

TP3 states that “an over-reliance on community input ... during the determination of development applications can lead to unnecessary delay in assessments and inconsistent outcomes that detract from community agreed rules.” However, it also needs to be taken into considerations that quite frequently development applications are introduced that are of a scope that was not necessarily indicated by the previous consultations.

ACTCOSS would advise that non-statutory consultation methods need to be revitalised. Previous systems for community input are no longer operating – such as Local Area Planning Advisory Committees.

As a suggestion, perhaps there is scope an existing or new non-government organisation that could provide people with independent advice about planning concerns as distinct from the Authority, and have the ability to conduct community consultations on planning matters. Perhaps consultations conducted by an outside organisation might be able to facilitate community participation that may be more forthcoming than by Authority-initiated consultations.

Third Party Appeals

ACTCOSS is concerned at the removal of some third party appeal rights and notifications proposed in the paper. Appeal mechanisms both ensure that residents are able to access appropriate review of decisions, as well as ensure that the Authority is appropriately considering relevant rules and procedures. While appeals may be occasionally be considered a “nuisance” by some proponents, Technical Paper 3 points out that they constitute a tiny fraction of Development Applications – the “problem” with appeal mechanisms seems to have been vastly overstated in terms of their disruption to the planning system overall.

In particular, ACTCOSS supports and encourages the proposition that “community organisations whose objects of association cover issues relevant to the local area should continue to have standing to appeal” (TP3, p.38).

Compliance and Complaints-handling

Sometimes compliance problems and complaints can be the results of neighbourhood disputes. ACTCOSS is concerned that compliance complaints could, on occasion, be used as a harassment technique, for example, to try to an unwanted neighbour to leave an area. This is particularly of concern if the reasoning is one of racial disharmony, sexuality, or that the lessee is unable to maintain their property due to financial stress. It is not appropriate that the compliance complaints system, and ACTPLA, to be used in what is effectively a form of discrimination.

While there is the potential for ACTPLA to dismiss complaints as being vexatious or frivolous, this does not really address the problems being raised. As well as maintaining a risk management assessment, there is scope for ACTPLA to act as a referral agency or seek to involve appropriate conflict resolution services to try to assist in resolving the dispute.

Environmental Impact Assessment

ACTCOSS notes with concern proposals to reduce the use of environmental impacts statements in the planning system.

In addition, while environment impact assessments generally include some social parameters, there is scope to increase the detail of the social impact of development on the community. This could include, for example, the extent to which the development provides for a variety of income types and affordable housing, the impact upon the use of public space, and surrounding buildings, particularly the impact on nearby community and government buildings and activities, as well as those of the private sector.

Some recent changes to the planning system, including the creation of East O’Malley Estate and the recent changes to the Stromlo settlement, are examples of how the planning system has failed to adequately consider the impacts on social diversity. “East O’Malley Woodland” is now being marketed as “desperately desirable” – implicitly making the far from subtle suggestion that the estate is “exclusive” and will be located well away from moderate income earners, let alone marginalised Canberrans. These current examples indicate that the ACT may be experiencing increasing spatial segregation of disadvantage, and only significant consideration, planning and investment will be able to reverse this unsettling trend.