



Submission to the ACT Legislative Assembly Standing  
Committee on Planning and Environment's Inquiry into the

# DRAFT PLANNING AND DEVELOPMENT BILL 2006

August 2006



## **ABOUT ACTCOSS**

ACTCOSS acknowledges 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 traditional owners 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 and territory 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.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

### **Contact Details**

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

Director: Ara Cresswell  
Policy Officer: Llewellyn Reynders

August 2006

© 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.

**Submission to the ACT Legislative Assembly Standing  
Committee on Planning and Environment's Inquiry into the  
Draft Planning and Development Bill 2006**

## Planning for Social Equity

Planning systems and the built environment can have multiple and pervasive effects upon living conditions and social equity. Where housing is located, its quality, and the distribution of low-cost housing has substantial effects upon how people manage their financial and social circumstances. The distribution and accessibility of transport systems, employment premises, open space, social infrastructure and public amenities throughout the urban environment affects people's ability to earn income, and access educational opportunities, healthcare and social support.

It is frequently those in our society who have the least resources who bear the brunt of poor urban planning. Urban design that creates disparities in access to services, results in the exclusion of affordable housing in well-located areas, or reduced social connectedness exacerbates differences in social opportunities and obstructs efforts to reduce social inequality. People living on low incomes have the least degree of choice in housing, and are frequently forced to reside wherever housing is least expensive. Planning systems should help ensure that inexpensive housing is located near to employment and social services, and *vice versa*, to help address social disadvantage and ensure that the prosperity created by urban environments is shared between all of its residents.

The most obvious example of the failure of urban design is the creation of concentrated areas of poverty. Canberra has historically avoided this fate, but ACTCOSS is currently concerned that current trends may be pointing to a greater spatial aggregation of poverty. These include the changing location of public housing, rising disparity between house prices in central and outer Canberra, a tight private rental market, increasing disparity in transport costs and the concentration of employment opportunities in central areas. Most significantly, ACTCOSS would advocate that the planning system, in concert with other government strategies, such as the management of public housing assets, should assign a high priority to preventing any further concentration of disadvantage in particular local areas.

Thus, ACTCOSS would make the initial comment that the draft *Planning and Development Bill 2006* does not appear to address these over-arching concerns. While there are vague passing references to some social aspects of urban planning, the Bill does not place any significant importance on improving social equity as an important goal, nor upon explicitly recognising that the people of Canberra have diverse needs that require consideration by the planning process.

## Planning System Reform

ACTCOSS has been involved in consultations on the Planning System Reform Project, by submitting to the initial consultations in July 2005 and by its continuing role on ACTPLA's Planning and Development Forum.

ACTCOSS raises the general concern that the Planning System Reform Project has been aimed primarily at the declared intention to make the planning system simpler, faster and more effective, but may not have paid a great deal of attention to its stated objective of "recognition of the opportunity for planning to contribute to social equity"<sup>1</sup>. While ACTCOSS has no issue with improving the accessibility and timeliness of planning regulation, we are concerned that an opportunity has been missed to more closely entwine social equity objectives into the planning framework.

In responding to the initial directions paper produced by ACTPLA, ACTCOSS raised a number of issues<sup>2</sup>, including:

- Affordable housing
- Concessional leases and direct grants
- Lease purpose clauses
- Infrastructure charges
- Zones and codes
- Master plans and neighbourhood plans
- Plan variations
- Track-based assessment
- Community consultation
- Appeals and complaints
- Impact Assessments

---

<sup>1</sup> ACTPLA (2005) Planning System Reform Project Directions Paper, p.5

<sup>2</sup> Note: The ACTCOSS Submission on the Planning System Reform Project from July 2005 is available at [www.actcoss.org.au](http://www.actcoss.org.au)

## **The Draft *Planning and Development Bill 2006***

ACTCOSS notes that the draft *Planning and Development Bill 2006 (the Bill)* is only one stage of the Planning System Reform Project, and that many of the recommendations and policies to be pursued as part of the project will be implemented through other means, particularly through changes to the Territory Plan and the associated development of zones and codes. Thus, in many respects of the proposals, it is difficult to comment on the outcomes without being able to examine the details that are still to be determined.

The Bill itself is essentially framework legislation, which outlines general approaches and powers in relation to planning and development. Many parts of the Bill are more or less reproductions of sections of the *Land (Planning and Environment) Act 1991* and the *Planning and Land Act 2002*, which are intended to be repealed. While the Committee and the community may have further opportunities to discuss the more detailed proposals when the restructured Territory Plan becomes available for inspection, it is clear that the passage of the draft *Planning and Development Bill 2006* will generally endorse the proposed direction of the Planning System Reform Project.

This submission will briefly touch upon some more general issues concerning the planning system, and will later outline some specific issues in the proposed legislation.

***Affordable Housing:*** On a number of occasions, ACTCOSS has raised the possibility that the planning system could be more proactive in promoting the goal of affordable housing, in concert with other government agencies and strategies. It appears that this has been treated as outside the scope of the Planning System Reform Project, although ACTCOSS would maintain that an emphasis on equitable housing outcomes should be an integral part of the process.

***Concessional Leases:*** ACTCOSS welcomes the review of concessional leases and the Government's rejection of the recommendation that concessional lease status lapse after 20 years<sup>3</sup>. ACTCOSS notes that the Bill strengthens Government oversight and control of leases granted on a concessional basis<sup>4</sup>, and ACTCOSS agrees that this is appropriate and assists in ensuring that concessional leases remain used for the purpose for which they were granted, or else are returned to the Territory or change in use for an equally appropriate purpose. However, we would point out that only the lessee can appeal a decision about the determination of concessional lease status (Schedule 1, Item 18, p.306), and would advocate that third parties should also have standing to appeal these decisions – given that concessional status has been granted to meet community needs.

---

<sup>3</sup> ACTPLA (2006) Report on the granting and administration of concessional leases in the ACT: Government Reponse, Recommendation 6, p.3

<sup>4</sup> see Part 9.4 of the Draft Bill

**Community Facility Zoning:** ACTCOSS also welcomes the decision to retain the community facility zoning as a distinct land usage in the Territory Plan. In addition, we would encourage greater utilisation of this zone, particularly in high demand areas such as Civic and the Town Centres.

**Appeals:** ACTCOSS would express its unease at the reduction in appeal rights for third parties for a range of development applications. While ACTPLA is no doubt as efficient and disinterested as possible in determining development applications, given its relatively small resource base, it is by no means infallible, and there should be appropriate judicial review of its decisions.

While second parties have the option to request a reconsideration of a refusal or conditional approval, as well as full appeal rights to the AAT for a wide variety of approvals, the same rights are not afforded to third parties. The breadth of third parties with rights to appeal and the range of developments that are appellable have already shrunk in recent years, and the Bill further restricts these. Noting that appeal through the AD (JR) Act is unattainable for many in practice, particularly for low-income individuals or community organisations, the increasing restrictions on appeal rights for third parties has the potential to reduce judicial oversight of ACTPLA.

**Exempt Assessment:** ACTCOSS remains concerned that the expansion of activities categorised as exempt from requiring development approval may lead to a deterioration in the built form of new residential areas. The removal of requirements for development applications means that there will be far heavier reliance on building approval and private building certifiers to enforce development controls. This may be less effective at ensuring compliance.

## Legislative Issues

While there are a number of more detailed issues that may become apparent when any revised Territory Plan is presented, at this stage ACTCOSS will focus upon issues detailed in the Bill.

**Object of Act:** ACTCOSS notes that the main object of the Bill has remained unchanged from the *Planning and Land Act 2002*. This states that:

### 6 Object of Act

The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—

- (a) consistently with the social, environmental and economic aspirations of the people of the ACT; and
- (b) in accordance with sound financial principles.

ACTCOSS particularly is interested in the interpretation of the phrase: “social, environmental and economic aspirations” – a phrase that is also repeated in s97 and s99 of the Bill in relation to the planning strategy.

ACTCOSS is concerned that these concepts are too vague to give any meaningful legislative or judicial interpretation to the intent of the Bill. We would advocate that the terminology is refined to articulate what those aspirations might be, particularly as the current language may have widely divergent interpretations.

ACTCOSS recognises that ultimately, the object of an Act is of only minor importance in working out the meaning of legislation, and the more detailed prescriptions in the Bill will generally receive far greater administrative and legal scrutiny. However, particularly in light of the *Human Rights Act 2004*, the object of an Act plays a relevant role in determining the status of any legal ambiguity in legislation, and should have some reasonably objective basis through which it can be interpreted.

**Sustainable development:** In 1992, the Commonwealth Government, endorsed by the Council of Australian Governments, released a foundation document on sustainability: the *National Strategy for Ecologically Sustainable Development*. Its core objectives were stated to be:

- To enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations
- To provide for equity within and between generations
- To protect biological diversity and maintain essential ecological processes and life-support systems

It is interesting to compare this with the principles in the Bill (s8). While the basic concepts of environmental protection and inter-generational equity are largely the same, the idea that sustainable development incorporates the promotion of individual and community well-being and welfare is not present. Similarly, while the definition in the Bill expressly includes the principle of equity between generations, there is no reference to equity *within* generations – meaning that the principle that development should help ensure that everyone has equitable access to resources has been lost.

ACTCOSS would strongly recommend that the principles of community welfare and equity within generations be re-introduced to the definition of sustainable development.

***Object of Territory Plan:*** At first glance, it is interesting to note that the Territory Plan (*the Plan*) has a slightly different object from the Bill as a whole (s47), and that it is not stated that the Plan must be consistent with the object of the Bill (s48). This object states that:

#### **47 Main object of territory plan**

The main object of the territory plan is to ensure that the planning and development of the ACT provides the people of the ACT with a sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.

This object is narrower than the object of the Bill, and while it may be difficult to provide a comprehensive and definitive list of adjectives for the type of environment that the community expects, none of those listed express a number of key social justice principles, for example:

- *equitable*: where people all have fair access to resources
- *accessible*: where everyone, including those with a disability, are free to move around and have equal access to the built environment
- *affordable*: where everyone has access to a basic standard of living at a modest price
- *inclusive*: where the diversity of people is recognised and are equally recognised in decision-making

Similarly, it is interesting to see the short list of activities that are attributed to people by this statement: they “live, work and have their recreation”. While the word “live” could technically encompass all aspects of life, it is interesting that aspects of life other than work and recreation are not included, for example, to interact with other people and participate in the life of the community. It is not made salient that people do not simply act individually, but live together in families and communities and make a broad variety of social connections. Consideration could be given to acknowledging that social inclusion and connectedness are appropriate goals for urban design.

***Discretion to withhold information:*** Section 64(2) appears to give a very wide discretion to ACTPLA to withhold background information that accompanies a draft variation to the Territory Plan. While it is acknowledged that there may be a variety of circumstances where such action would be appropriate, it seems prudent to at least give some indication of the grounds on which this action may be taken, such as privacy or public security, rather than a broad discretion.

***Committee oversight:*** ACTCOSS remains concerned at the reduction in legislative oversight of the Territory Plan variation process as outlined in Division 5.3.5. While ACTPLA generally conducts useful and open consultation processes, legislative oversight by the Committee remains an important element of scrutiny of the planning system, and often assists in addressing issues that had otherwise not been considered or received inadequate attention. While it might be useful for there to be some process by which the Committee stage might be bypassed for non-controversial changes, leaving this decision solely in the hands of an Executive officer seems open to misapplication.

In particular, ACTCOSS notes that the Bill proposes to give the Minister discretion over whether a draft variation will be considered by the Committee, which appears to blur the distinction between legislative and executive roles. It seems difficult to recommend a system of oversight that allows the object of scrutiny to determine the matters of inquiry.

While ACTCOSS notes that section 70(3) clarifies that the Committee may inquire into a draft plan variation on its own initiative or by a reference from the Assembly, we also observe that section 71 does not appear to operate under these circumstances. In other words, if the Minister decided not to refer a variation to the Committee, and the Assembly subsequently did so, the Minister appears to be able to approve the variation without waiting for the Committee's report, or taking the Committee's recommendations into account.

***Technical variations:*** ACTCOSS notes that, at times, the Territory Plan variation process has been a cumbersome instrument to correct what have been considered very minor changes to the Plan. However, while it seems appropriate to include a new mechanism to achieve this (Part 5.4), there seems little explanation as to why the instrument should not be disallowable.

***Content of SEAs and EISs:*** ACTCOSS observes that the content of Strategic Environmental Assessments (SEAs) is to be prescribed by regulation (s93) and that the content of Environmental Impact Statements (EISs) is to be determined by the Authority. ACTCOSS would comment that environmental reports tend to focus upon the environmental aspects of development – even by their title – and frequently give insufficient attention to social impacts. While we acknowledge that social impacts are addressed, they are often confined to relatively narrow terms such as health, safety and heritage status. Broad social issues such as affordability, equity, or inclusion tend not to be mentioned. ACTCOSS would hope that there is broad consultation on prescribed content, and that ACTPLA is able to consider these issues as a matter of course.