15 June 2022

Environment, Planning and Sustainable Development Directorate
Email: EPSDDcomms@act.gov.au

Dear Sir/Madam

PIA ACT Submission – Draft Planning Bill

The Planning Institute of Australia (PIA) is the national association representing professional town planners throughout Australia. The Institute has a total membership of about 5,500 people. The ACT Division of the Planning Institute of Australia (PIA ACT) is led by a committee of members who voluntarily help advance the planning profession in the ACT.

We appreciate the opportunity PIA members have had to participate in the preparation of the Draft Bill through our involvement in the Legislation Working Group, as well as the various opportunities members have had to attend Information Sessions, including the Industry Specific session. We congratulate EPSDD staff in the exemplary manner that they have conducted the consultation process, and in particular the efforts of Mr James Bennett.

To ensure our submission reflects the views of the wider PIA membership, we have undertaken our own consultation process during the public exhibition period of the Draft Bill. We prepared weekly emails to members on specific aspects of the Bill with 'talking points' to prompt members to provide feedback. In addition, Committee members have held face-to-face meetings with PIA members to discuss their personal issues with the Draft Bill, based on their particular expertise or specialised area in the planning profession.

PIA ACT supports the ACT Government's vision for Canberra, as per the 2018 Planning Strategy, *to be a sustainable, competitive and equitable city that respects Canberra's unique legacy as a city in the landscape and the National Capital, while being responsive to the future and resilient to change*. We are keen to ensure that the components of this vision are embedded into the new Planning Act.

Our submission, outlined in the following pages, divides the Draft Bill into what we consider the primary component parts. The submission then incorporates the range of matters raised

by our members and attempts to distil the main issues into “Key Messages” while retaining the reasoning behind our arguments, with more detailed explanations on each part.

The submission is structured into specific parts of the Draft Bill with each issue being the primary heading for our submission, in the following way:

1 Objects and Principles

2 Consultation

3 Strategic Planning

4 Territory Plan

5 Development Assessment

6 Significant Development

7 Environmental Impact Assessment

8 Territory Priority Projects

9 Other Matters

By necessity, the submission is quite comprehensive and we would be happy to meet with EPSDD officers to discuss and/or clarify any of the points or suggestions that we have raised.

Yours sincerely

Trevor Fitzpatrick MPIA (Fellow)
PRESIDENT, PIA ACT DIVISION

1
Objects and Principles

1.1 Key Messages

✓ PIA supports the Object of the Act and the intended means to achieve the object, plus the principles of good planning. However, we have the following concerns:

- ✘ The exclusive use of 'Ngunnawal' in relation to the knowledge, culture and tradition of the traditional custodians of the land.
- ✘ No reference to economic aspirations for the people of the ACT in accordance with sound financial principles.
- ✘ The Principles do not apply to Development Applications and proponent led Territory Plan Variations.
- ✘ The Principles do not directly address social needs and public benefit.
- ✘ The term urban renewal should be used rather than urban regeneration.

✓ PIA support the inclusion of references to addressing Climate Change within various Principles.

1.2 Our Recommendations

- Remove reference to 'Ngunnawal' and include reference to First Nations People or indigenous people.
- Expand Planning Principles to include 'promotion of housing supply and affordability' and 'social need and public benefit considerations'.
- Adjust Principles to refer to 'housing affordability', in addition to 'living affordability' and to refer to 'urban renewal', rather than 'urban regeneration'.
- Apply the principles to the preparation and assessment of Development Applications and proponent led Territory Plan Variations.

- Ensure principles are embedded into the various sections of the Draft Bill where there is a focus on outcomes (i.e. Territory Plan, Development Assessment, EIS, Significant Development, Territory Priority Projects, Granting of Leases)

1.3 The Details

Traditional Custodians

While the Draft Planning Bill recognises the importance of Aboriginal people's knowledge, culture and tradition, the proposed Section 7(3) raises several questions.

1. How is 'Traditional Custodians' defined?
2. Where is 'Traditional Custodians' defined in ACT or Commonwealth law?
3. How does the ACT Government know that the Ngunnawal people are the only 'Traditional Custodians' of the lands and waters that comprise the ACT?
4. How was that decision made?
5. On the basis of which ACT or Commonwealth statute was that decision made?
6. How is the 'the knowledge, culture, and traditions of the Traditional Custodians of the land' importance to land use planning in the ACT if the Bill/Act remains silent on how it is to be applied?
7. Were all of the different groups claiming connection to the lands and waters of the ACT consulted and their free, prior and informed consent obtained, consistent with the Human Rights Act 2004 (ACT) and the United Nations Declaration on the Rights of Indigenous Peoples?

PIA ACT are aware that PIA Life Fellow Dr Ed Wensing has made a separate submission with significant detail on the matter of exclusive recognition of Ngunnawal people in the Draft Bill. We fully support the concerns of Dr Wensing.

Economic Aspiration Object

Economic and financial aspirations are a key feature of the current Object of the current *Planning and Development Act 2007* (P&D Act). The economic aspirations and sound financial provisions should be central to the Object of the Draft Planning Bill. The future development of the Territory is a significant economic contributor, and planning will set the foundations for financial investments contributing to the overall economic prosperity and liveability of the ACT and surrounding regions. Development in the ACT promotes significant public and private investment, stimulates job creation and facilitates economic prosperity. Accordingly, it is appropriate for the economic aspirations of the ACT to be reflected in Section 7 Object of Draft Planning Bill.

Application of Principles

While the Principles contain a number of aspirational outcomes, it is recommended that the Authority consider applying these principles to the preparation and assessment of Development Applications and proponent led Territory Plan Variations. Incorporating Principles of Good Planning into planning legislation is a relatively new undertaking with little planning or legal evidence available on the overall impact of interpreting and applying these provisions. Specific regard should be given to the role of Principles of good planning in assessment and determination of Development Applications along with any implications for Third Party Appeals to the Tribunal.

We suggest that EPSDD consider whether the Principles should be allocated a priority with some principles more important than others.

We also suggest that the new Territory Plan could include performance criteria that directly relate to each of the principles, requiring applications (for Territory Plan Variations and/or Development Applications) to demonstrate how the principles are achieved.

Housing Supply and Affordability Principle

The Principles do not include any commentary regarding housing supply and affordability. The closest reference to this is under principle *(a) activation and liveability principles*, which references 'living affordability'. While PIA have been advocating the value of planning in improving living costs (eg via improved accessibility), living affordability is not a broadly used or understood term in the ACT. Within this context Principles of Good Planning should be include, or at least aims for, appropriate housing supply and affordability for the benefit of the ACT and its residents, in addition to the living affordability principles.

Under the P&D Act the Territory Plan may make specific reference to affordable housing [s51(2)(d)] but the Draft Bill only refers to 'living affordability' [s2(b)]. The reference to 'housing affordability' is a planning matter and should be used, as opposed to 'living affordability' which seems to imply a broader sense of affordability that may include housing but also other features such as cost of living items which are not directly related to planning outcomes.

Social Needs and Public Benefit Principle

Principles of Good Planning fails to include considerations such as social need and public benefits. These principles are widely used in other planning legislation to qualify the need

and benefits of planning policy and specific developments. The Authority should consider these concepts in the Principles of Good Planning.

It is not clear as to why there are various references to 'social wellbeing' which differs to the 'wellbeing' reference under *activation and liveability principles*.

High quality design principles

The reference to 'urban design practices' should be 'urban design principles' to be consistent with the heading.

Natural environment conservation principles

Bio-diversity connectivity and habitat values apply to urban open space. However, it is not clear whether this relates to private open space within urban developments or whether it relates to areas zoned as urban open space, or both. PIA considers it critical that biodiversity connectivity and habitat values apply public spaces, as public spaces provide opportunities to improve bio-diversity and habitat outcomes.

Urban regeneration principles

The term 'urban regeneration' usually refers to areas that have urban problems – unemployment, poor housing and socially exclusion. A definition of 'urban regeneration' encompasses a comprehensive and integrated vision and action which seeks to resolve urban problems and bring about a lasting improvement in the economic, physical, social and environmental condition of an area that has been subject to change or offers opportunities for improvement (Roberts, Peter. "The evolution, definition and purpose of urban regeneration." *Urban regeneration: A handbook* 1 (2000): 9-36).

The terms 'urban renewal', 'urban intensification' and 'urban infill' are used interchangeably in the ACT Planning Strategy 2018. This follows from the adoption of a planning policy in the Strategy that is based around compact city outcomes. While there are some points of commonality – the term 'urban regeneration' typically has its basis in the resolution of urban problems. In the circumstances, the term 'urban renewal' seems more consistent and reflective of planning policies outlined in the ACT Planning Strategy 2018.

2
Consultation

2.1 Key Messages

- ✘ PIA does not support the removal of the pre-DA consultation process.
- ✘ PIA does not support the limited reference to Good Consultation Principles in the Draft Bill
- ✘ The Draft Bill should detail the Consultation Principles that inform and set the framework for preparation of Guidelines
- ✘ The discretionary ability to make Consultation Guidelines is not appropriate.

2.2 Our Recommendations

- ➢ Good Consultation should be a Good Planning Principle
- ➢ Good Consultation Principles must be prepared and included into the Bill (as part of Section 10)
- ➢ The preparation of Consultation Guidelines be a mandatory requirement, not a discretionary one and should be prepared by engaging with the community, industry, professional groups and the Aboriginal and Torres Strait Islander Elected Body
- ➢ The reference to 'Guidelines' be changed as the publication as a Notifiable Instrument effectively makes the requirements of the document mandatory.
- ➢ The Pre-DA Consultation process be retained.
- ➢ The Pre-DA Consultation process be implemented prior to any referral to the Design Review Panel (DRP) and that a summary of community issues be included in the DRP referral documentation to enable the DRP members to understand the broader community implications of the development proposal.

2.3 The Details

Value of Consultation

The Planning Bill 2020 maintains the statutory public notification processes for Development Applications and major amendments to the Territory Plan (other than through a Territory Priority Project or Major Amendment Proposal – Government Policy) that exist under the Planning and Development Act 2007. The Planning Bill 2020 also:

- abolishes the requirement for pre-development application community engagement for prescribed developments
- allows for the Minister to make good consultation guidelines

The review of the planning system is being undertaken with the aim of delivering '*improved spatial and built outcomes across the Territory'*. PIA considers that it is critical that people be provided with opportunities to participate meaningfully about how the city evolves. Government and bureaucracies cannot in isolation effectively address problems associated with urban development[1].

The planning system review highlights that trust in the current planning system needs to be improved. Transparency and openness in decision making is critical – information and knowledge on which decisions are made and what factors are taken into account needs to be provided and fulsome explanations provided about why decisions are made and how issues are addressed.

Collaboration and co-operation offer more effective planning and decision making than a traditional 'rational planning' model where experts working in isolation provide solutions/proposals that lack understanding of community contexts and interests.[2]

The importance and value of engaging with the local community has been acknowledged by EPSDD:

> *"We need to be less focused on the multitude of rules and start to get people to think about what we as a community want for our local area. (pg 14)*[3]
> *Often a proponent will go to the Territory Plan, design their concept and then go and talk to the community. By then a lot of investment has been made. We are trying to push it back further and further and to say, "We've got this block. Here are our givens.*

1 Gurran, N Australian Urban Land Use Planning 2nd ed 2011, Sydney University Press
2 Thompson, S and Maginn, P Planning Austral 2nd ed 2012 Cambridge United Press
3 Ben Ponton, Chief Planner Standing Committee on Planning and Urban Renewal Inquiry into the ACT Planning Strategy 2018 (20 March 2019)

We want to achieve a residential development or a mixed-use development." We would then start to have the conversation about how that might work for the local community. (pg 15)[4]

Without early community participation in the development process, people are more likely to feel that development is set in stone, that their involvement is tokenistic and that little opportunity for change will occur, other than through appealing the decision. That is the community engagement is more about '*announce and defend'* as opposed to '*debate and decide'*. If the first that people hear about a development is when a Development Application is notified, any opposition is likely to be amplified.

Good Consultation Principles

There is no one approach taken to community engagement in the planning process in other jurisdictions – the South Australia Planning, *Development and Infrastructure Act 2016* refers to a community engagement charter, while in NSW the *Environmental, Planning and Assessment Act 1979* refers to community participation principles. The ACT's Pre-DA Community Consultation Guidelines for Prescribed Developments (August 2020) highlight the:

- value of effective and on-going partnerships between the community and proponents
- importance of accessibility for all in the community as well as clear and plain communication
- engagement needs to be inclusive, the views of all parties need to be genuinely considered, including divergent interests, not just those who are the most prominent or more powerful
- role of professional knowledge and how that can come into conflict with local expertise or traditional knowledge
- need to provide complete documentation
- difficulties in coming to a mutually acceptable outcome but the importance of openness and transparency – reasons for decisions and how community views have been addressed should be provided
- need for diverse opportunities for people to participate – in part driven by the significance of the project, but also in response to community interests

4 Ben Ponton, Chief Planner Standing Committee on Planning and Urban Renewal Inquiry into the ACT Planning Strategy 2018 (20 March 2019)

It is considered that community engagement results in better decision being made for the community and should incorporate:

- Reasonable, timely, meaningful and ongoing opportunities for the community to participate in relevant planning processes.
- Be weighted towards engagement at an early stage.
- Information about planning issues should be in plain language, readily accessible.
- Participation methods should seek to foster and encourage constructive dialogue.
- Participation methods should be appropriate to the significance and likely impact.
- Communities should be provided with reasons for decisions (including how community views have been taken into account).

While the Draft Planning Bill differentiates between 'good planning principles' and 'good consultation guidelines', community engagement should be a 'good planning principle'. New community engagement guidelines be prepared establishing, amongst other things: Consultation requirements; Documentation requirements; Tools and Timing.

These community engagement guidelines should be prepared by engaging with the community, industry, professional groups and the Aboriginal and Torres Strait Islander Elected Body.

The community engagement guidelines should be a disallowable instrument (rather than a Notifiable Instrument) and subject to consideration by the ACT Legislative Assembly.

The new community engagement guidelines would apply to:

- Members of the community who are affected by a proposed major development should be consulted by a proponent before an application for development approval is made – as per s138AE of the Planning and Development Act 2007. This needs to be included in the Planning Act 2022 to ensure consistency in its application
- Community engagement carried out by a government entity on a government strategy or policy leading to a draft major plan amendment
- Community engagement carried out by the Minister where a major plan amendment is required as a part of a territory priority project

Pre-DA Consultation

Based on the above commentary highlighting the value of consultation and principles for consultation, we consider that the Pre-DA consultation process should be retained. We acknowledge that many members of the community will always be unclear as to where a

proposal is at in the planning approval pathway. In this regard it is reasonable for the Planning Authority to accept that some members of the community will believe that a proponent-initiated consultation process is sanctioned by the Authority and/or reflects endorsement of a proposal by the Authority. We consider that this ongoing misunderstanding should not present any reasoning for abandoning the process. We consider that refinement of the process plus a greater focus on initial 'messaging' for the consultation will contribute to a better community understanding of the consultation processes. This could be better outlined in the consultation guidelines.

The role of the Pre-DA consultation process is not just to provide information to the community and defend a pre-determined position, it is to ensure that stakeholders feel like they have been effectively consulted and involved. This reduces conflict and reduces anger directed at the planning system itself (rather than individual proposals). It is our understanding that the pre-DA consultation process has been supported by Community Councils, as well as industry groups, which is a sign that it is effective.

Specific Sections of the Draft Bill

There are references to 'community participation' [s7(1)(a)], community 'consultation' (s10) and 'public consultation' [s34(1)(3)]. It is not clear why there is a difference and not common terminology.

Under s 44(3) '*The consultation report must include the issues raised in any consultation comments about the draft territory plan'*. The consultation report must show how the issues raised have been responded to. We consider that it would be stronger if the proponent was required to show if the issues raised during the consultation have been accepted, or not – and if not, why.

Under Part 5.3 Territory Plan Major Amendments it should be made clear that a proponent is required to undertake community engagement on a proposed amendment to the Territory Plan.

3
Strategic Planning

3.1 Key Messages

- ✓ The stronger emphasis on Strategic Planning is supported.
- ✓ The establishment of a hierarchy of planning strategies is supported.
- ✓ The establishment of links between strategic planning processes and statutory planning is supported.

- ✗ The preparation of District Strategies should not be discretionary.
- ✗ No specified link between District Strategies and District Plans or other elements of the future Territory Plan, except that future Territory Plan Variations must consider the relevant District Strategy.
- ✗ The future of Centre Master Plans, Concept Plans and Structure Plans is not certain.

3.2 Our Recommendations

- ➢ The Draft Bill recognise the importance of structure plans, concept plans and master plans and include relevant provisions in Chapter 4 Strategic and spatial planning.
- ➢ Preparation of District Strategies should be followed by the preparation of District Plans and this should be outlined in the Draft Bill.

3.3 The Details

Master Plans

The inclusion of Chapter 4 Strategic and spatial planning is a positive step by the Authority to elevate the role of strategic planning in the ACT. While this new Part 4.1 of the Draft Planning Bill references (in very broad terms) the role of District Plans it fails to acknowledge or consider the benefits of existing strategic and master planning such as structure plans

and location specific master plans. We are concerned that as there is no refence to these plans in the Draft Bill that they will have no purpose in the new Planning System.

The Authority, industry and community have invested considerable time and effort into the preparation and adoption of structure plans, concept plans and master plans. It would be a poor outcome to lose this significant body of strategic and master planning work in a new planning system. Structure plans and master plans further inform the Authority's desire for a planning system with a direct line of sight from strategic planning to development outcomes.

Link between Strategic and Statutory

PIA has continued to support EPSDD in its endeavours to strengthen the link between strategic and statutory planning. We consider that one of the key mechanisms to achieve this is to entrench the strategic planning process in legislation and mandate that the statutory documents (i.e. Territory Plan) implement the relevant strategic plan directions.

We are encouraged that the preparation of District Strategies and District Plans will contribute to the delivery of this outcome. However, we are concerned that the Draft Bill does not go far enough to entrench this process. The preparation of District Strategies is a discretionary process, where the Authority 'may' make a District Strategy and it suggests that the strategy is itself a 'plan' without any reference to the need for a District Plan that would have statutory effect in the development assessment process. The provisions for District Strategies should include the setting of a regular process of review of each District Strategy.

Consideration of Planning Strategy

The Draft Bill specifies that the Planning Strategy is not to be considered when assessing a significant development or Territory priority projects. Given that a Territory priority project or a significant development will propose a development of a substantial scale and/or impact and may also include a Territory Plan Variation, PIA consider that the Planning Strategy should be a relevant consideration.

4
Territory Plan

4.1 Key Messages

✓ PIA support the continuation of the two-level Territory Plan Amendment process with inclusion of 'major' and 'minor' amendments.

✓ PIA support the confirmation of procedures for proponent initiated Territory Plan Amendments.

✗ There should be more opportunity for Variations to follow the simplified and quicker 'Minor' variation pathway.

✗ The 'Major' Variation process needs to be further reviewed, it is still too complicated and lengthy.

✗ There should be appeal rights for applicants seeking a Proponent Initiated Variation.

4.2 Our Recommendations

- Revise the Draft Bill to incorporate requirements for the Territory Plan to include zone objectives, development tables and Codes.
- The Draft Bill should specify that zone objectives should implement the Good Planning Principles and outline how this is to be achieved.
- The DRP should have a role in advising on Territory Plan Amendments.
- There should be more opportunity for Variations to follow the simplified and quicker 'Minor' variation pathway.
- The 'Major' Variation process needs to be further reviewed, it is still too complicated and lengthy.
- There should be opportunity for review, where EPSDD decides not to progress with a Proponent Initiated Variation.
- All Minor Amendments should be subject to limited consultation.

4.3 The Details

Requirements of Territory Plan

Under the Draft Bill, the Territory Plan is to set out "*the policy outcomes to be achieved by the plan; and requirements and outcomes against which development proposals are assessed*." The Draft Bill does not provide any indication as to whether there will be objectives for zones or the future construction of permissible or prohibited development types within the various zones. The Draft Bill should outline how these key planning matters will be dealt with in a new Territory Plan.

The Territory Plan Chapter appears to have been unnecessarily condensed or edited to remove potentially important provisions and content of a new Territory Plan. It is recommended that the Authority reconsider Chapter 5 and reintroduce requirements around zone objectives and codes.

Currently the P&D Act requires zone objectives to be consistent with the statement of strategic directions. The Draft Bill does not identify how zone objectives will be drafted or any relevant considerations. This provides for considerable uncertainty for industry, community and the Authority in the preparation of zone objectives within a new Territory Plan. The Draft Bill should specify that objectives should implement the Good Planning Principles and outline how this is to be achieved.

The new Bill does not include any requirements for a code. Removing the current Section 55 (Codes in the Territory Plan) from the Draft Planning Bill 2022 should be reconsidered as specific codes currently perform an important function in the Territory Plan by providing local context, identity and character (where specified) to an area along with site specific controls and considerations for the future development of that area.

Amendments to the Territory Plan

Current provisions are quite specific for Territory Plan Variations about what needs to be publicly issued. This allows for the community to develop an understanding of the draft amendment.

The Draft Bill is quite vague, and the level of transparency provided under draft major plan amendments is diminished. There is a requirement to prepare a report on the issues raised in the draft major plan amendment consultation. Transparency would be improved if it was made clear that the report should provide a response to the issues that have been raised.

Minor Amendments

The Draft Bill identifies a range of circumstances where no consultation is required for a Minor Amendment to the Territory Plan. PIA is concerned that this approach may lead to confusion within the community. For example, one of the circumstances is when an Amendment would "*not affect anyone's rights*". It is not clear how the Authority can determine this with any consultation. We consider that a limited consultation process, as per the requirements of S82 (2) would not extend the Amendment process to any degree.

The Minor Amendment provisions are similar to the current 'Technical Variation' provisions. We consider that the Draft Bill could consider opportunities for certain proponent-initiated Amendments to be considered under the Minor Amendment processes.

The list of minor amendments are very prescriptive which is unlikely to allow the Authority to exercise discretion where an unforeseen minor amendment is required. We consider there should be a provision within this part of the Draft Bill that allows the Authority to undertake a minor amendment beyond the prescriptive measures so as to give the Authority greater flexibility in the application of minor amendments.

Major Amendments

The current Territory Plan Variation process is complex and lengthy, usually taking 1-2 years to complete. The Draft Bill does not take the opportunity to totally review the process to address key requirements that create delays in the process. We consider that a further review is appropriate to identify the legislative provisions that are still too complicated and increase timeframes.

While we support the formalisation of proponent-initiated Amendments, we are concerned that there is no obligation, as per Section 56(b), for the Authority to progress with the Amendment even after formally accepting an application.

The *Planning Bill – Policy Overview Figure 7* seeks to illustrate a flow path of a major plan amendment. Our review indicates that:

- Authority initiated major plan amendments has approximately 12 separate steps and/or decision points in the process; and
- Proponent-initiated major plan amendment has approximately 15 separate steps and/or decision points in the process.

In addition, the major plan amendment process contains very few statutory timeframes meaning the proposed amendment could sit with either the Authority or the Minister in the process for an undisclosed period of time as seems to be the case to date. A major plan amendment process which does not incorporate statutory timeframes creates uncertainty for proponents and the community, along with diminishing transparency for all parties. As major plan amendments are costly and time-consuming it is important that statutory timeframes are incorporated in the Draft Bill to provide consistency with the Development Assessment process which is subject to detailed statutory timeframes.

We consider that the Major Amendment process could be simplified with specific timeframes for each step, as summarised below:

1 Scoping preliminary work on need and scope of rezoning (10 week timeframe)
2 Lodgement of Rezoning Application (1 week timeframe)
3 Public Exhibition (6 week timeframe)
4 Post-Exhibition amendments/responses (13 week timeframe)
5 Assessment and Finalisation of Rezoning Determination (17 week timeframe)

This process considers that a Major Territory Plan Amendment can usually be completed within about 37 weeks.

Appeal Rights

As outlined above, the formalisation of the proponent-initiated Major Amendment process is supported. However, as there are numerous points in the process where the Authority can decide not to progress with the proposal, even after formally accepting an application, we consider that the proponent should have merit-based review rights at each of these decision-making points. We consider this review could either be undertaken by an Assembly Committee or an independently appointed panel with expertise in policy planning.

Role of DRP in Territory Plan Amendments

In addition, it is noted that neither Chapters 4 or 5 of the Draft Planning Bill contain any provisions which requires the National Capital Design Review Panel to have input into the drafting or reviewing the new Territory Plan.

Located on the Planning Review and Reform website is a report titled *ACT Planning System Review and Reform – Achieving Improved Built Form, Place Design and Public Realm Design Outcomes* prepared for the ACT Government by Hodyl & Co dated December 2021. This extensive report was prepared for the purpose of providing *"an evidence based*

research report on how to deliver best-practice design outcomes for built form, place design and public realm in the ACT". The report outlines seven core recommendations for the ACT to improve design outcomes through planning. None of the seven core recommendations have been incorporated into the Draft Planning Bill. This is considered a significant missed opportunity which will likely undermine the Authority's capacity to achieve an outcomes focused planning system.

We consider that the Draft Bill presents an ideal opportunity to review, and expand, the functions and responsibilities of the Design Review Panel to assist in the delivery of an outcomes focused planning system which moves away from quantitative planning controls to qualitative considerations.

We consider the Design Review Panel should be required under the Draft Bill to perform a review function of any design elements of the new Territory Plan. These inputs will likely benefit the construction of the new Territory Plan and ultimately the development outcomes at a site level. In this regard it is recommended that the Part 6.2 Design Review Panel Section 93 Function of design review panel is expanded to include the following matters:

- Structure and content of the new Territory Plan (where related to design);
- Major amendments to the Territory Plan (where related to design); and
- Estate Development Plans.

As many Australian planning jurisdictions require Design Review Panel advice and review of planning instruments and controls, it is a missed opportunity to not utilise the skills of the Design Review Panel in broader function under a new planning system.

5
Development Assessment

5.1 Key Messages

✓ The 'outcomes focus' of the Draft Bill places emphasis on the skills and qualifications of the decision maker in their ability to make value-judgements about what a good planning outcome is, rather than reliance on numerical rules.

✗ The Draft Bill does not adequately ensure that a DA decision-maker will have such skills.

✗ The Draft Bill misses an excellent opportunity to improve community trust in the DA approval process as it does not address transparency in the assessment and decision-making process.

✓ PIA supports identification of an 'Essential Design Element' in the conditions of a Development Approval provided that there is a notified framework of the range of attributes that would be considered as 'Essential Design Elements'.

✓ PIA supports the pre-application process under Section 160 of the Planning Bill including the advice and information required by the Planning Authority to provide a proponent at the pre-application stage.

✗ However, PIA does not support the provisions that enable the Authority to provide multiple, and potentially contradictory, advices.

✓ PIA supports provisions of the Draft Bill that provide proponents with greater certainty and value at the pre-application process.

✗ The Bill includes considerable 'administrative' details on the DA processes.

5.2 Our Recommendations

- The Draft Bill should include provisions that require the DA decision-maker (particularly for significant development) to have the same qualifications as the Chief Planner – i.e. eligible to be registered with a representative body (such as PIA or similar).
- The decision-maker for major proposals with community objections or at least for Significant Development, should be separate to the assessment officer who would allow in-person submissions (verbal statements limited to a few minutes length) prior to the decision-maker making the decision in this public forum. Ideally the decision-maker would be a panel of, possibly three, suitably qualified EPSDD officers
- The assessment report prepared by the assessing officer should be a publicly available document, without the need for an FOI request, or an ACAT appeal.
- One assessment officer should be responsible for a development application, from its acceptance through to assessment reporting.
- 'Matters for Consideration' should include additional matters such as:
  - Confirmation that the development achieves a 'good planning outcome' (including how this is determined).
  - Consideration of how the development contributes to climate strategy targets
  - Consideration of how the development values, protects and promotes Aboriginal knowledge, culture and tradition.
  - Stronger consideration of the provisions of the Territory Plan
- A further review of the DA provisions in the Draft Bill should be undertaken to consider the administrative processes that could be undertaken through published Guidelines or Chief Planner Protocols.

5.3 The Detail

Decision-Making

The introduction of a planning system that has a focus on achieving good planning outcomes, rather than a reliance on numerical rules that set the lowest acceptable position for all developments, requires appropriate resourcing to ensure the key decision-making point (i.e. that of determination of DAs) demonstrates that the desired outcome is actually achieved.

PIA considers that, for major proposals with community objections or at least for Significant Development, that the decision-maker should be separate to the assessment officer. The assessment officer would prepare the assessment report against the Territory Plan and other relevant considerations with a recommendation for approval, with conditions, or refusal, with reasons. The Draft Bill should include provisions that allows the applicant and objectors to view the assessment report prior to the final decision being made. The separate decision-maker would then allow in-person submissions (verbal statements limited to a few minutes length) prior to the decision-maker making the decision in this public forum. Ideally the decision-maker would be a panel of, possibly three, suitably qualified EPSDD officers.

We do not see this process extending the assessment timeframe to any great degree as meetings could be held weekly. Based on current DA statistics[5] there are about 200 multi-unit DAs and 10-15 mixed-use DAs each year. It is unlikely that all of the multi-unit DAs would need to be subject to this suggested decision-making process, but even if they all were this would mean that about 4 DAs per week would be determined in this manner. If each DA took about 20-30 minutes each, for short verbal submissions to the panel and then the panel's determination of the assessment report and recommendation, then only about 2 hours per week would be needed to be allocated to this process. This is considered a very cost-effective outcome to achieve significant improvement in transparency and trust plus potentially avoid a number of ACAT appeals.

Public Availability of Assessment Reports

PIA notes that initial community consultation in advance of the planning system reform highlighted that a key community concern was that of the lack of transparency in the development assessment process[6]. We consider that, in addition to the above decision-making process, public availability of the DA assessment report would allow objectors to see how the issues that they raised in their submissions had been addressed by the assessment officer. PIA does not consider that the current Notice of Decision (NOD) adequately achieves this. While we understand that the DA documentation is proposed to continue to be available on the EPSDD website, we consider that posting the assessment report, and subsequently the NOD, should not add any administrative burden to ESPDD officers.

[5] https://www.planning.act.gov.au/development_applications/development_application_performance/development-applications-da-statistics-2021-22
[6] ACT Planning System Review and Reform Project - Project Update December 2021

Essential Design Elements

While PIA support the concept of Essential Design Elements, it is unclear what an essential design element is. To assist in providing clarity, we consider it appropriate to incorporate a framework for essential design elements within the Design Review Panel remit, and the associated design guidelines for the Design Review Panel.

Pre-Application Process

Under Section 163, the Planning Authority may ask for further information more than once for a Development application. The Planning Authority asking for multiple further information requests, protracts the assessment timeframe of a Development Application, and provides little certainty to a proponent.

While we accept there is scope for initial 'administrative' requests such as requests to correct errors and the like, there should be only one substantive request relating to the planning evaluation of the DA.

PIA is concerned, that the Planning Authority's ability to provide multiple pre-decision advices (S177(2)), might erode Industry's confidence in the planning process, with the potential for inconsistent information, and a scattered approach to the planning process. This can result in applicants allocating considerable time and resources to addressing the pre-application advice only for it to be changed at a later time. PIA recommends, that the Planning Bill allows for one pre-decision advice.

Public Notification

Section 175(3) enables the Planning Authority to extend the public notification period for a DA. It is considered that this should only be implemented under limited specified circumstances. A guideline should be prepared to detail the circumstances to provide certainty to applicants, the community and industry.

General Provisions

There are over 105 pages dedicated to DA Assessment in the Bill, compared with about 60 pages in the NSW legislation. The inclusion of specific procedural requirements in the Bill does not contribute to any greater level of community trust or that due process would be followed. The provisions often relate to simple procedural matters that could be better resolved through EPSDD internal protocols and guidelines.

Assessment Timeframes

The DA public notification timeframe and entity referral time frame has increased, with the overall DA assessment timeframes remaining the same. It is likely a DA will take longer under assessment with an increased notification timeframe.

An amendment submitted by the proponent or requested by the Planning Authority is treated as a new Development application from a statutory timeframe perspective. PIA is concerned, that this will result in less than ideal planning outcomes, as the proponent will be unwilling to makes changes on their own volition or at the request of the Planning Authority, in being penalised with what will be considered by the Planning Authority as a new Development application from a statutory timeframe perspective. An amendment application can only be made in the first instance if the proposal is substantially the same. Therefore, the material and information in its entirety is not a new development application whereby assessing officers are required to review the development application in its entirety.

Prohibited Development

It is acknowledged that 'Prohibited Development' is somewhat complex due to the interrelationship of the ACT Leasing System. However, the wording of the relevant sections of the ACT have potential to confuse the wider community who are likely to consider a prohibited development to be just that – prohibited. Maybe alternative terms, such as 'existing uses' might overcome the perception that a land use identified as prohibited cannot be approved.

The current P&D Act includes specific provisions limiting new waste facilities in Fyshwick. These provisions are carried over into the Planning Bill. PIA considers that it is a failing of legislation when individual development proposals need to be especially prohibited through new sections in the Act rather than through the standard statutory provisions that permit and prohibit other forms of development (i.e. Territory Plan Development Tables for each land use zone).

PIA makes no comment on the merits of a particular development proposal, only to submit that the Territory Plan should be the statutory document that identifies permitted and prohibited land uses through the Zone Development Table. The need to introduce special legislative clauses for one form of development suggests that the Territory Plan does not exhibit the statutory strength in controlling land uses that is necessary. The continuation of these clauses in the Draft Bill perpetuates this issue.

6
Significant Development

6.1 Key Messages

✓ PIA is supportive of the ongoing role of the Design Review Panel in the Draft Bill.

✘ There is no direct requirement for significant developments to achieve good planning principles such as climate resilience, or knowledge, culture and tradition of the traditional custodians.

6.2 Our Recommendations

- There should be direct refence to the good planning principles and a requirement for applications for Significant Development to demonstrate how they are achieved.
- Significant developments should be required to address a Connecting with Country Framework.
- The Draft Bill should be reviewed to consider whether there is a particular need to include the Significant Development provisions, with the aim that these provisions be absorbed into other relevant sections.

6.3 The Details

Significant Development

It is not clear that the inclusion of the provisions for 'Significant Development' is necessary and potentially could be contrary to the objective of *providing clarity of process, and outcomes for the city's community* (p8)[7], by possibly adding confusion for the community in considering the various approval pathways.

Significant Development includes estate development plans, design review panel applications and environmental impacts assessments. However, EDPs and EIS's are each

[7] ACT Planning System Review and Report Project, Planning Bill – Policy Overview March 2022.

dealt with in other parts of the Draft Bill. The DRP provisions could readily be addressed in the Development Assessment chapter.

The Significant Development chapter of the Draft Bill indicates that a 'prescribed development proposal' must be referred to the DRP, but does not specify, or elsewhere refer to, what a prescribed development proposal might be.

Design Review Panel

PIA is supportive of the ongoing role of the Design Review Panel in the Draft Bill. However, it is unclear how the DRP will be implemented differently or provide greater value to the planning process than what has taken place to date.

It is understood that the purpose of the DRP was to impart built form design excellence into a project. We understand that this would also include consideration of Entity standards which at times can lead to sub-optimal design outcomes (such as the influence of the current Waste Code on urban design).

There is an additional upfront cost and time required for the proponent in preparing a referral for the DRP. Notwithstanding, PIA is supportive of a clear statutory process and weight given to the DRP. For example, if the DRP is supportive of a proposal for achieving design excellence then it should be given greater weight than the baseline numerical standards and Entity requirements. If a development proposal is fundamentally a project where urban design is the primary consideration and departs from the Territory Plan but achieves built-form excellence, then the DRP advice should override the urban design provisions of the Territory Plan, allowing the Assessing Officer confidence that the application achieves a good planning outcome.

Connecting with Country

A Connecting with Country Framework can reflect how a development or land use proposal can empower First Nations voices within decision-making resulting better outcomes for First Nations people. It is considered that the Draft Bill should facilitate the preparation of a Connecting with Country Framework specifically focussed on planning decisions and that the Significant Development sections of the Draft Bill should require proposals to address the Connecting with Country Framework.

7
Environmental Impact Assessment

7.1 Key Messages

- PIA do not support the removal of the S211 EIS exemption process
- PIA are concerned that there should be a two-step impact assessment process and that the ESO + EIS process does not achieve this
- PIA considers that, due to the need for referral of a Scoping Document request to various Entities, that an EIS triggered by one process listed under the new Regulations, will be required to address a broad range of issues that normally wouldn't need to be addressed to the extent required through an EIS (e.g. to the extent that a DA would consider to demonstrate compliance with the Territory Plan).

7.2 Our Recommendations

- The preparation of an EIS be separately certified by an accredited person to confirm the EIS meets the requirements of the Scoping Document and is suitable for lodgement.
- That an EIS exemption process be retained
- That a staged environmental impact assessment process be facilitated, if not through an EIS exemption, then through a separate process. This would enable an initial assessment, possibly limited to the specific EIS trigger (e.g. if the trigger is potential impacts on a threatened species, then only a threatened species impact assessment should be required)
- The Draft Bill remove the separate cost recovery provisions for environmental impact assessment.
- That the Public Health EIS provision be removed or absorbed into the general EIS provisions

7.3 The Details

Preparation of EIS

PIA accept that a common community concern about the preparation of an EIS is that the EIS has been prepared by consultants directly funded by the proponent. This community concern adds to the perception of a lack of trust in the planning and environmental impact assessment process. While we do not share such community concerns, perceptions are sometimes more damaging to the planning profession than reality. As such, we consider that there is a relatively simple mechanism that could be included in the Draft Bill to address this issue. Every EIS should submitted to support a development proposal should be 'signed-off' by a suitably qualified person who was not involved in the preparation of the EIS. This person is NOT a decision-maker but certifies that the EIS has been prepared in accordance with the requirements of the Scoping Document and meets the required standard to be formally lodged.

We consider the person undertaking the initial EIS 'audit' should be a qualified and skilled environmental assessment practitioner who has been certified under an accredited scheme, such as the Certified Environmental Practitioner Scheme (CEnvP) or PIA Registered Planner scheme as is being implemented in other jurisdictions that are implementing planning system reforms. We consider that this process will increase the community's trust in the impact assessment process.

EIS Exemptions

Removal of the S211 process will most likely place increased focus on ensuring that Scoping Documents only require an EIS to research matters that are the specific trigger for the EIS. However, the EIS Scoping process seeks inputs from many ACT Agencies and therefore there is some doubt that a Scoping Document and subsequent EIS process will be any more efficient and/or streamlined than the current EIS process. While PIA does not support the removal of S211 exemptions, it does support the requirement for EIS reports, be issued with an initial scoping report to identify key issues. As such, the new process will result in more appropriate impact assessment of significant developments.

The current S211 exemption process has allowed long term planning projects to work through environmental matters at the beginning of the project, consistent with the EPBC Act (Commonwealth legislation). The removal of the S211 exemption, will generate more work in processing applications for the proponent and the Planning Authority in assessing multiple

proposals, which may become confused over the life of a project, with no additional benefit given to the project for environmental outcomes.

The removal of the S211 process will place increased focus on ensuring that Scoping Documents only require an EIS to research matters that are the specific trigger for the EIS. However, the EIS Scoping process seeks inputs from many ACT Agencies and therefore there is some doubt that a Scoping Document and subsequent EIS process will be any more efficient and/or streamlined than the current EIS process.

Cost Recovery

We acknowledge that cost recovery for environmental impact assessment (EIA) has always been part of the current Act, but to our knowledge has not been implemented. PIA does not support the Planning Authority seeking cost recovery for Environmental Impact Statement (EIS) Scoping Environmental Significance Opinions (ESO). We consider that as the DA fee scales include additional fees to cover any additional costs for EPSDD. If the new process achieves its aims of a simpler, and quicker EIA process, then there can't be any justification for a separate cost recovery process.

The Planning Authority has a standard fees and charge booklet, all associated fees and charges should be considered upfront and transparently, so that the proponent can make an informed decisions prior to entering into an EIS process.

Should the Minister decide to establish an inquiry panel for an EIS, the burden of cost should not be placed on the proponent as a cost recovery exercise. The direct or indirect costs to the Territory should be covered by the initial DA fees.

Public Health EIS

The Draft Bill refers to a public health EIS, however it is not clear what a public health EIS is. The inclusion in the Draft Bill, cross referencing the Public Health Act, seems to be a legacy from the current Act. But it is understood that there has never been a public health EIS under the current legislation that has been in force since 2007.

8
Territory Priority Projects

8.1 Key Messages

✓ PIA broadly supports the replacement of the Minister Call-in powers with the Territory Priority Projects process, provided there is sufficient detail provided during the initial consultation to enable the community and industry to have a full understanding of the project.

✘ The draft Bill mandates that only the Chief Planner can determine a Territory Priority Project. However, if the Chief Planner must declare an interest the Project will stall, presumably requiring the Chief Planner to stand down. A simple delegation (such as would occur if the Chief Planner took leave) to an 'acting' Chief Planner is not possible under the Draft Bill.

✘ The specific inclusion of Light Rail in this Section of the Draft Bill seems to suggest an immediate failing of the provisions. If the Territory Priority Project provisions in the Draft Bill are sufficient, then the Light Rail proposal should follow the appropriate processes to be classified as a Territory Priority Project.

8.2 Our Recommendations

- The Draft Bill be amended to enable the Chief Planner to set up an internal panel of suitably qualified persons, including the Chief Planner, to determine Territory Priority Projects allowing say a minimum of three people to determine the Development Application through a simple majority decision.
- The sections relating to Light Rail should be removed and the Light Rail Project should follow the same process as any other project to be declared as a Territory Priority Project.
- The Draft Bill should include additional provisions that confirm that the Chief Planner must take into consideration that same matters for consideration under Section 181 when deciding Territory Priority Project DAs as any other DA.

8.3 The Details

Classification as a Territory Priority Project

While PIA broadly support the replacement of the Minister Call-in powers with the Territory Priority Projects process, we are concerned that the Draft Bill only broadly outlines what forms of development could be classified as a Territory Priority Project.

The Draft Bill includes a number of subjective terms, such as 'significant benefit', 'time critical', 'sufficient community consultation' etc. None of these terms are defined, in relation to Territory Priority Projects.

While we accept that it is necessary for the Minister to retain a degree of flexibility and discretion in determining what may constitute a Territory Priority Project, we consider that a more definitive range of considerations would assist in reassuring the community that these provisions were not simply a Government strategy to by-pass proper planning process.

Decision-Making

We understand that a Territory Priority Project would be subject to the same DA documentation and assessment processes as other DAs. However, this is not as clear as potentially it could be.

In a further action to enhance community trust in the planning process, the Territory Priority Project provisions of the Draft Bill should include additional provisions that specify that a DA needs to include the same documentation as per other sections of the Bill (e.g. documentation for any DA or DRP referral for a Significant Development or EDP or EIS as required). In addition, the Draft Bill should confirm that the Chief Planner must take into consideration that same matters for consideration under Section 181 when deciding Territory Priority Project DAs as any other DA.

The Draft Bill requires the DA to be determined by the Chief Planner and specifies that the Chief Planner cannot delegate this function. However, we see a potential issue if the Chief Planner is required to avoid a conflict under S25. We consider that this could be resolved by additional provisions that allows the Chief Planner to set up an internal panel of suitably qualified persons, including the Chief Planner, to determine Territory Priority Projects allowing say a minimum of three people to determine the Development Application through a simple majority decision.

Light Rail Provisions

In a similar manner to the inclusion of special waste facilities in Fyshwick (refer to 5.3 of this submission, under 'Development Assessment'), we consider that the need to specifically reference one development proposal in new legislation can be seen as an immediate failing of the general provisions of the Bill intended to address that matter.

9
Other Matters

9.1 Key Messages

✓ We support the requirements that the Chief Planner must have planning experience and expertise and either has appropriate qualifications or is eligible to be registered with a representative body (such as PIA or similar)

✘ Third party appeals should not apply to EIS's and EDPs

9.2 Our Recommendations

➢ The Draft Bill should incorporate transitional provisions relating to the introduction of the new Act, but should incorporate over-arching and ongoing transitional provisions

9.3 The Details

Transitional Provisions

While it is common for any new legislation to incorporate transitional provisions to facilitate the introduction of the new Act, we consider that as this legislation facilities a range of sub-ordinate statutory documents, the Draft Bill should also address the transitional arrangements for future amendments to such documents. For example, where a form or guideline that is a Notifiable Instrument is amended, and where an Amendment to the Territory Plan is introduced, there should be the opportunity for proponents who have either submitted proposals under the former form, guideline or Territory Plan to continue to the final decision point based on the relevant provisions in force at the time of submission/lodgement.

Consistency of Terms

Under s21 the terms 'cohesive urban renewal' and 'cohesive planning' are used. It is not clear what these terms mean, and also why the term 'urban renewal' in this section when s9(2) uses the term 'urban regeneration'.

Third Party Appeals

Third party appeals rights are important for the city and allow the community additional involvement in the planning process that is not automatically available to residents of other jurisdictions. Major centres, such as town centres, are excluded from third party appeal rights. However, this exclusion is not extended to estate development plans, where a community has not yet moved in. It is not clear why are the town centres and city centre, are excluded but not new estates.

EIS's are required to undertake rigorous assessment by suitably qualified professionals in accordance with the requirements of a Scoping Document. While we acknowledge that there is value in community consultation on the draft EIS and a requirement for the final EIS to address community feedback, we cannot see that there is any value in allowing 3rd party appeals on the final EIS.

Estate development plans and EIS are identified as 'significant development' but are not provided with the same level of protections afforded to existing socio-economic hubs of Canberra. PIA supports exemption of third party appeal rights to Estate Development plans and EIS applications.

END OF PIA SUBMISSION