YWCA CANBERRA

Submission to the ACT Planning System Review and Reform

Acknowledgement of Country

YWCA Canberra proudly recognises the rights of Aboriginal and Torres Strait Islander peoples to own and control their cultures and pays our respect to these rights. YWCA Canberra acknowledges the need to respect and encourage the diversity of Indigenous cultures and to respect Indigenous worldviews, lifestyles and customary laws. We extend our respect to the Aboriginal and Torres Strait Islander women who for thousands of years have preserved the culture and practices of their communities on country. This land was never surrendered, and we acknowledge that it always was and will continue to always be Aboriginal land.

About YWCA Canberra

YWCA Canberra is a feminist not-for-profit organisation that has provided community services and represented women's issues in Canberra since 1929.

Our mission is 'We strengthen communities by supporting girls and women through our services and advocacy' and our vision is 'Girls and women thriving'.

We provide essential, quality services for women, girls and families in the ACT and surrounding regions. We work in the areas of children's services, community development, homelessness and affordable housing, youth services, personal and professional training, women's leadership and advocacy.

We are externally accredited against the Quality Improvement Council (QIC) Health and Community Service Standards (7th Edition). Accreditation against the QIC standards support us to improve client and community engagement, diversity and cultural appropriateness, management systems, governance and service delivery, while committing to a cycle of continuous quality improvement. In addition to the QIC standards, we are accredited against the following external client related service standards for our key areas of work:

- Australian Charities and Not for Profit Commission
- National Quality Standard for Early Childhood Education and Care and School Aged Care
- National Regulatory System for Community Housing
- Registered Training Organisations Standards

Through our national Affiliate Association with YWCA Australia, we are part of the World YWCA network, which connects 120 countries across the globe.

Introduction

YWCA Canberra welcomes the opportunity to contribute to the ACT Planning System Review and Reform Project. As a community and social housing provider and a recent development proponent, we have seen firsthand how planning and development regulations and the appeals process can be weaponised by those with time and resources who concentrate their efforts against new housing developments, particularly social and supported housing.

Housing in Canberra is beyond crisis. Shortages in supply exist across the spectrum from both private and public rentals, social and affordable housing, community housing and market purchases. The economic and policy-based forces behind these supply shortages are varied and not all within the remit of the ACT Government or Planning Authority, but the consequences of this undersupply on cost, vacancy rates, public expenditure in peripheral housing support services and overall community wellbeing is immense.

If the city is to reap the benefits of its growth and economic diversification as well as meet its own wellbeing framework, the development, diversification, and sustainability of both its housing supply and housing suppliers must underpin any planning reform proposals. For too long, *'planning'* has been a loaded term taken to be inherently suspicious by community groups with disproportionate influence looking to delay and defer sensible and conscientious progress. If Canberra is to ever meet the housing demands of its growing population, as well as deliver energy efficient housing at a time of peak cost of living pressures, sensible planning reform must proceed with these priorities in mind.

In the interests of achieving the objectives of the ACT Housing Strategy and continuing the narrative of a city grounded on values of inclusion and fairness, we argue that the new Planning Bill must accommodate additional limits on the review of decisions by the ACT Civil and Administrative Tribunal (ACAT). We also offer insight into the proposal to assign a new power to the Minister through the declaration of Territory Priority Projects.

1) Concerns with an "outcomes focussed" planning system

We note the broad objectives of the planning reform are to provide an outcomes-focussed approach, accommodating deliverables beyond pure technical compliance, to include social outcomes such as wellbeing and recreation. On the surface measures to consider general wellbeing are welcomed and align with the ACT Government's overall wellbeing framework, which we have previously supported. We urge caution in how a holistic outcomes-focused measure could be interpreted through the appeals processes however, as common objections to planning approvals have typically centred on the aesthetic characteristics of neighbourhoods at the expense of much needed housing proposals. We note that nebulous concepts such as 'special aesthetic' are incorporated into the draft Bill and could conceivably

be drawn upon to facilitate vexatious objections to otherwise sensible development proposals with their own meritorious outcomes.

Similar concerns should be held about the draft inclusions (s8, ss2) "enhancing places of special (…) heritage (and) historical significance". Heritage and cultural significance should not normally be concerning inclusions. Our experience with pursing a supported housing development on land we own however, has seen us forced to counter repeated claims of 'heritage' and 'cultural significance' in relation to a temporary building structure and non-native suburban trees. Such disingenuous claims should not be considered in the spirit of the reforms and should be mitigated against in the drafting where possible.

Recommendations:

1) The proposal to include an 'outcomes focussed' planning system as an objective of the Bill be approached with caution and take into consideration the potential for vexatious appeals potentially undermining the objective's intent.

2) Exemptions to third party appeals.

Third party appeal rights are variable across Australia and while limitations exist in terms of who can lodge an appeal and what development can be exempt from appeals, there is no nationally consistent approach.[1] The ACT is unique in that appealing development applications carries both an initial low-cost application fee and is a no-cost jurisdiction. The potential for vexatious appeals to proceed to a tribunal hearing with limited if any financial consequence on appellant parties is significant.

We note the recommendation from the Legislative Assembly Standing Committee on *Planning and Urban Renewal inquiry into engagement with development application processes* in the ACT from April 2020, which recommended the ACT Government continue to support third party appeals for planning decisions related to Development Applications. We do not support such a carte blanche approach to appeals and caution against the adoption of any similar intent in the final Bill, particularly where appeals are directed at otherwise appropriate housing proposals. Reviews of decisions, relating to planning and development, heard by the ACT Civil and Administrative Appeals Tribunal constitute the most significant portion of Administrative Reviews undertaken. The number of planning and development related reviews have increased in recent years, peaking at 37 cases in 2019-2020, from 19 in 2014-2015.[2],[3]

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[1] https://www.sjshire.wa.gov.au/profiles/sj/assets/clientdata/documents/uploads/ocm/ocm-2017/scm006.1.07.17.pdf

[2] https://www.acat.act.gov.au/_data/assets/pdf_file/0005/1887404/ACAT-Annual-Review-2020-21_FINAL.pdf, page 29.

[3] https://www.acat.act.gov.au/_data/assets/pdf_file/0003/1450299/10548-ACAT-Annual-Review-201819_FA_tagged-update.pdf page 28.

While third party appeal rights might be held as necessary for public transparency, there is an overwhelming need to review their application both in light of Canberra's urgent need for housing and the reality that third party appeals concentrate objections among well-resourced residents, often targeting new housing proposals, thereby distorting their value as a legitimate barometer of community sentiment.[4]

Following our recent engagement with the planning system through our efforts to build much needed supported housing, we believe the administrative review processes where they relate to residential development is being gamed by groups and individuals who are interested in delaying or permanently skuttling suitable housing proposals that have otherwise met the conditions for approval. Our own experience in responding to a third-party appeal at the Tribunal level also leaves us to question to applicability of the 'stands in the shoes' principle that applies to how ACAT approaches appeals.

The concerns of many community groups who gave evidence to the aforementioned inquiry raised the prohibitive cost of appealing a decision by the Planning Authority. The consensus of this evidence was one that considered the imbalance between the budgets of commercial developers and those of neighbourhood groups. This reality does not account for those social and community housing organisations with limited budgets, and without in-house legal expertise, who are transparently operating in good faith to deliver on their mission and meet the housing needs of the Territory. Further it does not acknowledge the reverse of this situation were resource and time rich community members use the appeals process to burden community housing organisations with the significant costs of responding to spurious claims and appeals.

If limitations for third party appeals are not given proportional consideration, so as to remove the prospect of purely vexatious litigation, sensible residential housing proposals catering particularly to the community or social housing sectors will be subject to routine and costly objections heightening the risk attached to pursuing such housing developments and jeopardising the sector's willingness to contribute to new supply.

Recommendations:

2) Third parties be precluded from appealing otherwise approved social and community housing development applications that have undergone consultation and met the requirements of the approval process.

[4] Woodcock (2012) mapped Victorian LGAs with the highest proportion of planning contestations and socio-economic status and found they aligned in 6 out of 10 cases. https://apo.org.au/sites/default/files/resource-files/2009-11/apo-nid60181.pdf

3) Territory priority projects

We also draw attention to the proposal to remove the Ministerial call-in powers, replacing it with declared 'territory priority projects'. Our understanding of this reform is that the decision to declare a project as a 'territory priority' sits with the Minister which streamlines the proposal through to the Chief Planner for decision, a statutory office holder, and limits objections to the project. While we do not object to the call-in powers as they are captured in the current bill, the loaded nature of the planning and development debate in Canberra, the contemporary application and revisionism of heritage status and the latent hostility towards proposals related to residential housing mean exercising the call-in power, regardless of how necessary a project may be, has become politically heated. In this regard, the deference to the Chief Planner offsets the disproportionate community response of calling-in an otherwise suitable and urgent project.

We also support the plan to include projects that are of "significant benefit to the people of the ACT" (s212) as 'territory priority projects' and urge that social and community housing be considered priority under this category.

Recommendations:

3) The establishment of 'territory priority projects' and the role of the Chief Planner as decision-maker, in this regard, be retained in the final Bill.
4) That social and community housing proposals, where they meet the full preconditions of development approval be considered as 'territory priority projects'.