Comment on DV343

My wife and owned an asbestos-contaminated house which we surrendered under the "voluntary" buy-back scheme.[1] We have bought and moved into another house that has a contaminated neighbour. As neighbours we are affected directly by DV343, and we object strongly to it.

I have been invited to make a submission to this inquiry because I made a submission to an earlier consultation process. The earlier consultation was undertaken before the list of contaminated houses was released (it was delayed for a most implausible reason, http://www.canberratimes.com.au/act-news/act-government-concern-over-1-billion-loan-if-mr-fluffy-list-released-20150116-12s4iv.html) and therefore before many people likely to be affected by DV343 realised they had an interest in the matter.

The Government's consultation with people affected by loose fill asbestos has been seriously deficient. The owners of the contaminated houses were never consulted adequately. Now that the buy-back stage has been completed, there should be a satisfaction survey of the ex-owners—these days businesses and government agencies routinely survey their clients to assess degree of satisfaction.[2] With respect to DV343, the people affected, the neighbours, should be consulted properly before the decision is made. Invitations to make submissions should be sent not only to people who made submissions to the earlier inquiry but to all who will be affected. The ACT Government **should write to all the neighbours** (side, back, across the street) of the houses to be demolished inviting them to make submissions to your inquiry.

Congratulations to the public servants who analysed and digested the submissions to the earlier enquiry into DV343. Their report, http://www.planning.act.gov.au/__data/assets/pdf_file/0015/41514/DV343_-_Report_on_consultation.pdf, is excellent. However, the responses they were supplied with are unconvincing.

A repeated passage

In a number of places in the report the following passage (or a variant) occurs:

> The ability to develop dual occupancy in the RZ1 suburban zone already exists for all blocks 800m^2 and above. DV343 proposes to reduce the minimum block size for dual occupancy from 800m^2 and above to 700m^2 and above. The ability to unit title the dual occupancy is considered to be an incentive for dual occupancy development on the surrendered blocks. It is not mandatory. Nor is it expected that all the surrendered blocks will be redeveloped for dual occupancy.

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[1] I put "voluntary" in quotes because homeowners had no real option. See "Options", Craig Painter, http://www.shglawyers.com.au/storage/The%20Mr%20Fluffy%20Crisis%20-%20Options%20for%20Affected%20Homeowners.pdf, p. 2. The same threat was made to enforce Asbestos Task Force requirements on the condition of surrendered property, http://www.act.gov.au/__data/assets/pdf_file/0004/678298/The-Surrender-Process-Fixtures-and-Fittings.pdf, p. 2. Owners of contaminated houses were under serious threat throughout the process.

[2] There should also be the inquiry Ms Gallagher promised when Chief Minister: "It will happen", http://www.hansard.act.gov.au/hansard/2013/comms/public31a.pdf, p. 59. See http://www.canberratimes.com.au/act-news/katy-gallagher-admits-flaw-in-act-governments-approach-to-mr-fluffy-asbestos-notification-20140826-108iun

This passage fails to acknowledge that the variation proposes to reduce the size for *only some* blocks, selected on a basis that has *nothing to do with any principles of town planning*.

The fact that it applies only to some blocks raises questions of equity. Whatever the effect of the variation on the amenity, value, etc. of adjacent blocks, it will be experienced only by people who happen to be neighbours of contaminated houses.

The fact that the basis of selection has nothing to do with any principles of town planning means that it will be simply a coincidence if DV343 has good effects overall. There is no reason to hope for any such happy coincidence.

The other points in the repeated passage have nothing specifically to do with DV343. There are various incentives for dual occupancy, it is never mandatory, many eligible blocks are not redeveloped, etc.—none of this explains why *these* blocks should be treated differently. Throughout the report the responses contain a good deal of irrelevant material, i.e. material that does not relate to the specifics of the variation.

Comments on particular points.

2.2.1 Support for DV343

The suggestion that DV343 "provide[s] opportunities for older residents to down size within their own suburb" adds insult to injury for older residents forced out of their homes who will be unable to return to their blocks because of the price increase ("uplift") that DV343 is intended to achieve. That is indeed its purpose—see 2.2.4.1 below.

2.2.2 Precedent set

"DV343 is not representing a strategic review": There should actually be a strategic review, and meanwhile DV343 should be rejected because it gives rise to inequities and anomalies that a strategic review would avoid.

2.2.3.1 Community consultation

Although the statutory public notification requirements have been complied with and Asbestos Taskforce members attended community council meetings, no one can truthfully say that the community, and in particular the people immediately affected, have been adequately consulted. Someone should read the Government's own community engagement handbook, http://www.timetotalk.act.gov.au/storage/communityengagement_FINAL.pdf

2.2.3.2 Accountability

The Response does not answer the point that DV343 is a "foregone conclusion". No matter what anyone says, DV343 will be implemented because it is an essential part of the Government's plan to pay for the demolition of the contaminated houses.

Critics of this plan who made submissions to the Legislative Assembly Public Accounts Committee last year were vindicated by its unanimous report, http://www.canberratimes.com.au/act-news/mr-fluffy-report-calls-for-board-of-inquiry-into-loosefill-asbestos-crisis-20141203-11z7di.html, but the Government immediately rejected its key recommendations. If your committee recommends against DV343 your report will likewise be rejected.

"Ultimately it is the Legislative Assembly that determines…". Ultimately it is the electorate that judges. Take the number of asbestos-contaminated properties, add the neighbours (right, left, back and across the road), double that (assuming two adults per household), and you have the number of electors directly affected. They all have family, friends, neighbours, workmates, acquaintances, etc. Then add up the total number of members all the political parties (Labor, Liberal, Greens) in the ACT. There are many more angry electors than there are party faithful. Under our electoral system (and especially at the next election, when the size of the Assembly will increase) electors who prefer a particular party but don't like something its current MLAs have done have the option of voting for candidates who have not already been MLAs. If "ultimately" the decision is political, then MLAs should consider the consequences.

The response goes on to say, "DV343 has been prepared due to extraordinary circumstances that have impacted on a number of dwellings in the ACT". For the persons living in those dwellings it will do nothing, and it will detrimentally affect their neighbours.

2.2.4.1 Financial considerations

Submissions that pointed out "that DV343 was aimed at recouping the cost [to the Government] of eradicating the asbestos" were simply restating acknowledged fact. Ms (now Senator) Gallagher: "[A]s part of our ability to recoup some of the costs associated with the buyback, we are looking at adding development rights to those blocks, and that would increase the price of the land… If we do not do that, if we do not look to take uplift out of the land, it would mean that you could add around $90 million to $100 million to the cost of the scheme overall." http://www.hansard.act.gov.au/hansard/2013/comms/public31a.pdf, p. 41.

The response that "It would have been remiss of the Government not to try to minimise some of the costs to the ACT community" is **seriously misleading**. It is important to think straight on this matter. The *costs of eradication* are not minimised by this variation. They will be whatever they will be—add up the cost of buying back the properties, the cost of demolition, of remediation, of disposal, of administration, etc.—the total is in no way reduced by this variation. The variation relates to the *distribution* of these costs among various sectors of the ACT community.

The motive of DV343 is political. The Government chose to reduce the impact on most ratepayers by loading as much as possible of the cost and disadvantage onto the owners and neighbours of the contaminated houses. According to the Chair of the Inner South Community Council, Mr Gary Kent, real-estate agents had suggested the loss in value of neighbouring homes could be $50,000 to $100,000. If that was accurate, the amount gained by the government by allowing strata title was effectively being paid by the neighbours (http://www.canberratimes.com.au/act-news/critics-label-fluffy-scheme-unfair-confused-and-unlikely-to-save-any-lives-20150526-gh9mqe.html). The estate agents' estimate may be inaccurate but, clearly, experienced people believe that there will be a significant loss of value. It will not in fact be paid to the Government, it will simply be destroyed. The Government will be paid by those who buy the cleared blocks. If property values move the way the Government hopes, ex-owners who buy back their blocks will pay the Government much of what they received in the buy-back, plus much of the cost of demolition, disposal, remediation, administration etc., and they will still have to find money to build on the blank block. Few will ever be able to return.

The Mr Fluffy disaster is not the fault of the ex-owners or neighbours of the properties. The main blame (so far as there is any) falls on governments. In a modern first-world country we expect government to prevent use of toxic materials, to fix the problem if such material is used, and to help, or at least not further disadvantage, citizens affected by natural or man-made disasters. In carrying these responsibilities government acts on behalf of the whole community. The right way to pay for the ACT's share of the cost of fixing this problem is to put a special temporary tax on all ACT properties levied in accordance with principles of equitable taxation.[3]

2.2.4.2 Planning merits

The Response consists of generic irrelevancies—it is all true but does nothing to explain specifically why there is any planning merit in changing the rules *for these properties and not others*. This variation will introduce spots or clusters of higher density into neighbourhoods in a random way, reflecting not any rational planning but merely the sales methods and successes of the company that sold asbestos insulation.

The strategic review dismissed in the reply to 2.2.2 should be held. There may be a case for amending current subdivision requirements generally, for all blocks, not just those affected by asbestos. Variation on that basis would be equitable and it would be made on planning merits.

However, the Government wants to give the properties it acquired through the "voluntary" buy-back an advantage over other properties in the market so as to minimise the rate increases resulting from the asbestos project. It wants to "increase options *for the affected sites*" and *not* for other similar sites because it wants to maximise returns from sales of government-owned properties.

2.2.6, 2.2.7 Territory plan strategic principles, suburban zone provisions

The words "typically", "predominantly", "primarily", can't disguise the fact that DV343 will result in denser development in places where the existing plan did not predict it. People who buy properties want a reasonable degree of predictability in the character of the neighbourhood. The Territory Plan exists to give people an assurance that the neighbourhood they buy into will not change too much too quickly. The purpose is not to prevent change altogether, but to give assurance that it will not be drastic and sudden. The plan itself allows for change and the plan can be changed by variation; residents are assured, however, that variations will not be made except on sound planning principles, with adequate public consultation, and that objections will be considered objectively in an impartial process. None of these conditions are being met.

2.2.8 RZ1 objectives

"The RZ1 objectives… does not exclude other forms of residential development". Obviously it excludes some forms in some cases, because otherwise this variation would be pointless.

2.2.9 Clusters

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[3] Ms Gallagher gave an estimate of $330 per ACT household as the cost difference between her Government's scheme and the alternative proposal to allow owners to retain ownership of their land. http://www.hansard.act.gov.au/hansard/2013/comms/public31a.pdf, p. 42. Mr Hanson described this sum as being "well within the margin of error", http://www.hansard.act.gov.au/hansard/2014/pdfs/20141204a.pdf .

"There is no existing limit on the number of dual occupancies in any given… neighbourhood". True, because so far there has been no tendency to cluster. But there is now. The Fluffy company went door-to-door, properties with asbestos insulation do cluster, dual occupancies resulting from this variation will cluster.

Some disruption is inevitable when the buildings are demolished; "This would be the case even if DV343 does not proceed". But DV343 will aggravate the disruption and perpetuate the effects. There is no denying the fact that people near a cluster of dual occupancy redevelopments will be living with increased traffic and other effects forever. If they truly have no reason to complain, then dual occupancy redevelopment should be allowed generally under a "strategic review".

2.2.10 Land values of surrounding blocks

"Land values in the vicinity of blocks 800m^2 and over have not been impacted by the existing provisions". That is because they were existing. People buying nearby knew what the rules were. If the Government changes the rules, the value of their properties will change.

I won't comment on all the sections. There is a lot of repetition and much irrelevancy.

2.2.20.2 Noise

"There is no evidence to suggest that a dual occupancy development has an increased noise level than a single residential development". There is no "evidence" in a strong scientific sense for a lot of things people nevertheless know quite well to be true.

2.2.22.4 Inconvenience during construction

Another concern is safety during demolition. See http://www.canberratimes.com.au/act-news/mr-fluffy-homes-can-be-demolished-safely-asbestos-taskforce-head-andrew-kefford-says-20140919-10fkrt.html. Mr Kefford envisages different kinds of precautions in different cases; some houses might have to be "bubble wrapped". Some independent person or body should make these decisions. The judgment should be made by somebody *whose career prospects do not depend* on the ACT Government, since the Government has an obvious motive to minimise cost. The risk of being sued years later by someone who contracts mesothelioma will not be much of a deterrent to cutting corners, because of the impossibility of proving causation.

Credibility is important to government. Public loss of confidence and trust is damaging. Many people bought contaminated houses in reliance on the Government's assurance that the houses were safe (the Certificate of Completion of Asbestos Removal Work). Neighbours supposed that the Territory Plan gave them reasonable assurance that their neighbourhood would not change suddenly and without good planning reasons. ACT citizens who may trust the planning process and believe that decisions will be made objectively and impartially will be disillusioned if it seems that the authorities just "go through the motions" of consultation when the Government really wants something.

Your committee should recommend (1) that DV343 not be approved, (2) that instead there should be a strategic review of residential zone provisions more broadly, (3) that the blocks be sold back to the former owners (if they want them) at the land value as

at 28 Oct. 2014, and (4) that the net cost of demolishing and remediating asbestos-contaminated properties be met by means of a temporary levy on all ACT properties.

Yours faithfully,

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