Riverview Projects (ACT)
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8 October 2018

Ms Caroline Le Couteur MLA (Chair)
ACT Legislative Assembly
Standing Committee on Planning and Urban Renewal
GPO Box 1020, CANBERRA ACT 2601.

By email: LACommitteePUR@parliament.act.gov.au

Dear Ms Le Couteur

Re: Inquiry into Engagement with Development Application Processes in the ACT

As you are aware the Ginninderry project is underway at west Belconnen and, over the next several decades, will provide affordable and sustainable accommodation for a significant portion of new Canberra homeowners. An intensive environmental research and assessment process that commenced in 2009 has led to the rezoning of the ACT portion of the site (in 2016); rezoning of the NSW portion is anticipated in 2019 subject to the State planning and environmental assessment processes. Construction has now commenced on the first ACT stage (350 dwellings).

The ACT rezoning approval and consequent variation to the Territory Plan provide a framework for the future development of the land but of course does not obviate the need for consequent further assessments and approvals at the Development Application level, for each subdivision stage and for subsequent buildings and works. Over time the project will require literally thousands of DA approvals and consequently we are following the deliberations of your Inquiry with some interest.

Because of this interest we have reviewed the numerous submissions that have been made to your committee by members of the public and stakeholder organisations. The submissions represent a diversity of views from differing standpoints, highlighting a wide range of matters for the consideration of your committee.

As a development organisation focused on a single project Riverview would not ordinarily make a submission to an inquiry such as this, in the knowledge that submissions would be made by industry organisations. But, following our review of the submissions received, we have felt that it is necessary to provide the commentary set out below relating particularly to the Submission made by the Environmental Defenders Office (the EDO).

The EDO is a publicly funded altruistic organisation with trained and skilled professional staff. Its opinions on a subject such as DA's which are a large part of its core business should command a commensurate degree of respect. Unfortunately we believe that in this instance the EDO has presented a misguided document. We elaborate on this below.

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Planning objectives

The opening section of the EDO submission quotes a relevant objective of the Planning and Development Act (sec 6(a)):

> *"to provide a planning and land system that contributes to the orderly and sustainable development of the ACT consistent with the* ***social, environmental and economic*** *aspirations of the people of the ACT". (our emphasis)*

The Act explicitly requires a triple bottom line approach; this is not acknowledged at all in the submission which focuses almost exclusively on the natural environment. There is no doubt, for example that one of the "*aspirations of the people of the ACT*" is for a consistent supply of affordable housing to meet both social and economic objectives. There will be conflicts between environmental and housing supply actions which must be balanced and managed. To simply state that there must be "*more robust protections of the environment as per the (Act) objective*" without acknowledging the other elements of the objective is disingenuous.

More so when it is simply presented as a bald statement without any evidence to suggest that environmental protection in the ACT is actually at a sub standard level. The opposite is in fact true. The ACT Commissioner for the Environment says as follows (http://reports.envcomm.act.gov.au/actsoe2015/index.html) with reference to the 2015 state of the Environment report:

> *"The key messages from the ACT State of the Environment Report 2015 are positive. Overall, the ACT environment is in good condition and is mainly well managed. Good progress has been made on previous Commissioner's recommendations to the ACT Government, while monitoring, and data collection, adequacy and storage and the need for more use of a broader strategic landscape approach to planning remain areas for further attention. On the defining issue of climate change, the ACT community has supported its Government to act locally and show leadership that can inspire other jurisdictions to commit to action."*

There is no reason to suppose that the next SoE report, due in 2019, will differ from this.

Role of the Territory Plan

A second major failing of the EDO submission is its ignorance of the Territory Plan and the role of the Plan in statutory planning processes. It is odd that in a 24 page submission the EDO do not once mention the Territory Plan. The functions of the Plan as set out in section 1.1 are as follows:

> *"Functions of the Plan (refer s46-56 of the Act)*
>
> *The Plan is a statutory document which is:*
>
> - *a key part of the policy framework for administering planning in the ACT, particularly where the Authority has decision-making roles,*
> - *used to manage development, in particular land use and the built environment,*
> - ***used to assess development applications***
> - *used to guide the development of new estate areas (future urban land) and the management of public land.*
>
> *The Territory, the Executive, Ministers and Territory authorities must not do or give approval for anything that is inconsistent with the Plan, ..." (our emphasis)*

The principal function of the Plan is to provide a framework for the assessment of development applications. Or, to put it another way, if there was no development and no development applications there would be no need for the Plan to exist. Any discussion of development applications would be expected therefore to include at least some reference to the role of the Plan.

The fact that the EDO does not appear to recognize the role of the Plan is evident on page 3 of their submission where they reference a Victorian example of an information sheet which describes a proposed planning change. This is in fact a rezoning proposal, equivalent to a Territory Plan Variation, but the EDO refers to it as a "DA". When and if the Victorian rezoning is approved then DA's would follow for the redevelopment of the site. The EDO does not appear to understand the important difference between a statutory planning scheme and a development application.

Whilst, on the face of it, it may be considered desirable for all relevant matters to be "on the table" when every single DA is under consideration (and this seems to be the EDO view) this is in reality a very inefficient, costly and time consuming approach. A more effective method is to see development approval as (in simple terms) a two stage process:

> Firstly a strategic plan is prepared (or an existing plan may be amended) taking a landscape environmental scale and city wide societal and economic approach. This is given legal force as a metropolitan scale statutory planning scheme. In Canberra this is known as the Territory Plan and there are equivalent instruments in all other jurisdictions. The planning scheme defines zones for different landuses or classes of land use and provides detailed prescription (usually by way of codes) as to how development, if and when it occurs, may proceed.
>
> Secondly, when an individual development is proposed, it is documented and presented by the proponent in the form of a development application, which is assessed by the Relevant Authority (in the ACT the Planning Authority) against the relevant provisions of the Planning Scheme (in the ACT the Territory Plan). It must be compliant with the Planning Scheme if it is to be approved.

The potential benefits of preparing a city wide strategic planning scheme are:

- Environmental factors are considered at the landscape scale, rather than ad hoc as individual developments are proposed.
- Social and economic factors, which are necessarily city-wide issues, can be properly considered.
- Planning controls can be established to meet whole of community triple bottom line needs.
- Decision making is usually at a political level, thus reflecting democratic community aspirations. In the ACT the Minister for Planning determines rezoning proposals, subject to review and potential disallowance by the Legislative Assembly.
- Subsequent development applications, which necessarily involve the investment of private resources, can proceed with a degree of certainty and efficiency because the "rules" are known and established. A DA that is compliant with the Plan should be automatically approvable.
- Because the "rules" are known and established the community has a clear understanding of what future development is possible in their area – they will not have to deal with development proposals that come as a surprise.
- And, most importantly, community engagement is focused at the broad policy level – this results in a planning control regime based on good outcomes for the whole community rather than the alternative – site by site planning decisions – which reflect only individual or localized property owner aspirations.

The Territory Plan is the strategic planning instrument for the ACT. We acknowledge that it is not a very accessible document, it is complex and lengthy and has grown more so over time. There are numerous improvements that would be warranted and which should be pursued. So much so that the benefits that should flow from the plan, as listed above, are often not apparent. The solution is to fix the plan, especially by making it simpler and more transparent. The solution is not, as the EDO suggests, to attempt to fix the problems by adding complexity to the DA process.

The EDO proposals would leave the Territory Plan in its current complex and opaque state and then, on top of this, add more time and complexity to the DA process.

Multi stage projects

The EDO proposes that where a DA is a small part of a larger scheme, with more DA's to follow, the larger scheme should be submitted and presumably re-submitted, with each DA. This is to ensure that the cumulative effects of incremental DA's can be assessed. In our experience the "incremental DA" approach does not occur in the ACT. The Ginninderry project provides a good example.

A landscape wide planning process, including detailed environmental assessment (of the total long-term impact of the whole project), was undertaken over a series of years. This provided the basis for the preparation of a master plan for the whole site which in turn provided the basis for a variation to the Territory Plan. The variation incorporated a concept plan in the Territory Plan covering the site and prescribing a number of detailed planning controls reflecting the environmental constraints identified by the assessment process. All subsequent DA's are obliged to comply with the site specific controls in the concept plan as well as to the more general requirements of the Territory Plan.

The certainty provided by the Territory Plan enables investment to proceed in public infrastructure such as roads, sewer and water supply, schools and the like. And in the Ginninderry case this also allows the creation and protection of a large conservation corridor totaling some 371ha in the ACT (and hopefully a further 206ha in NSW) which would not be possible without the certainty that is provided by the incorporation of the various land use zones, including the conservation zone, in the Plan.

This reflects the two-stage planning approach discussed above. It would simply not be sensible or practicable to put the Territory Plan provisions "back on the table" for reconsideration with every one of the thousands of DA's that will be lodged over time as the Ginninderry project proceeds.

The call of the EDO for DA's that are part of a larger scheme to be lodged together with the larger scheme for joint reconsideration again seems to reflect their lack of understanding of the important role of the Territory Plan in the planning process.

It is important to note that, whilst the Plan delivers a good degree of certainty (sufficient to underpin significant public and private investment decisions) it is not absolute and can be overturned by changing circumstances. In the Ginninderry case a parcel of land that was rezoned for residential development in 2016 has subsequently (as a result of heritage research work initiated by the Ginninderry project over and above the research requirements prescribed by the ACT Heritage Unit) been identified as having aboriginal cultural value. This land will now be excluded from the residential development zone.

Early and Genuine Consultation

The Ginninderry project is very widely acknowledged as having an exemplary commitment to community engagement, and indeed has won a national award[1] for its efforts in this area.

The EDO has proposed a need for more lengthy and extensive consultation before and after DA lodgment. We have no issue with the call for such consultation as we are already fully committed to such an approach. We do suggest that where, as is the case at Ginninderry, the development proponent has committed to and undertaken a sound engagement process, there is an obligation on the part of stakeholders to acknowledge this and participate in an honest and genuine fashion.

A specific case that warrants consideration is the development application lodged for stage 1 of the Ginninderry project. An objection to this DA was lodged by the EDO on behalf of the Ginninderra Falls Association (GFA). This followed intensive engagement (including, for example, an "open-door" policy at the Ginninderry project office and monthly meetings) over a period of several years with both of these organisations. The two issues that they raised in the appeal, the Little Eagle and Scarlet Robin, were not raised by them during the engagement process as matters of concern with regard to the stage 1 DA. Both these species had been included in the environmental assessments that preceded the Territory Plan variation and protection measures for both were incorporated in the Plan and, obviously, complied with in the DA. The Plan variation process was open to public participation and the GFA and several of its members were actively involved.

The lack of substance behind their case was evident when the EDO withdrew the appeal shortly before the hearing date, this was nevertheless after the project had incurred a delay of seven months. Ginninderry agreed to meet several conditions associated with the withdrawal of the appeal. Any or all of these items would have been readily agreed to by Ginninderry if they had been requested by the GFA at any time; the appeal process was not necessary and very costly.

An independent consultant was commissioned to evaluate the costs of the appeal process. The report (Macroplan Dimasi, attached) finds a total quantifiable cost of $4,200,000. In our view this is an under-estimate. A particularly worrying part of these costs is a sum of $1,300,000 incurred by homebuyers who were renting accommodation awaiting completion of their new homes (of the total 350 homebuyers 129 were renting). This money, approximately $10,000 per family, paid in rent over the appeal delay period would otherwise have been available for mortgage payments. So the impact on this aspect alone of the appeal has been an absolute cost of $10,000 to each of 129 families. A further important consideration, noting that Canberra has one of Australia's tightest and most expensive rental markets, is the 129 properties that could have been released back onto the market but were held back from the market for 7 months longer than necessary.

The proposals by the EDO for more intensive and lengthy consultation should be considered in light of the above where, when such consultation occurs and even where the EDO itself is involved, it is ineffective if the stakeholder commitment to the process is not equivalent to that of the developer.

"Standing" for ACAT appeals

The EDO proposes that any person who has made a representation regarding a DA should be granted standing for an appeal. As there is no limit on who may make a representation (and we do not contest this) then this means that any person may lodge an appeal on any DA. It seems nonsensical to allow such a system as there seems to be no logical reason to allow a person who is unaffected by a DA to delay the decision for at least six months. The example cited above illustrates the point that even if a

[1] Planning Institute of Australia 2017 national Awards for Planning Excellence, Commendation in the category "Public Engagement and Community Planning".

person has no chance of success the simple lodgment of an appeal will result in a substantial delay for the proponent with attendant costs.

The ACAT has applied very broad definitions to the relevant questions of "material detriment" and "standing". There is every opportunity at present for a person or organisation who is likely to be affected in the slightest way by a DA decision to mount an appeal and there is no need for this to be widened.

Independence in the Environmental Assessment Process

The EDO objects to the process whereby environmental impact assessments are conducted by experts commissioned by development proponents and that such assessments are consequently biased. They say that proponents are likely to "expert shop" to obtain environmental assessments that support their proposal.

In response to this we say as follows:

The consultants commissioned to undertake environmental research are qualified, experienced and ethically motivated professionals. In the same way that lawyers employed by the EDO would consider themselves to be qualified, experienced and ethically motivated professionals. For the EDO to impugn the professionalism of these consultants is inappropriate.

Environmental assessments are in all cases subject to rigorous scrutiny by regulatory agencies (which usually include their own qualified professionals) and the general public. Unprofessional work would be quickly exposed. Indeed it is in the interests of consultants to ensure that their work is highly professional; if it fails the assessment process because it is sub-standard then they are unlikely to be commissioned in future. A consultants objective is to secure a long term professional future, servicing many clients; producing sub-standard work for a single project will not achieve this.

Professionals may disagree, and the tendency to question the professionalism of a consultants work because one does not agree with her or his opinion should be resisted.

To the outside observer the environmental assessment process consists of two discrete steps: firstly a development proposal is prepared, and then that proposal is subjected to an environmental assessment, which it may either pass or fail. But it is not in the interests of a proponent to set up a proposal and then to simply have it assessed, allowing it to either succeed or fail subject to the assessment. This would be nonsensical. A better approach is for the proponent to work up the proposal in consultation with the environmental professionals to ensure that it is planned in a way that will meet environmental requirements. The final assessment will then find the project to be acceptable because it will have been moulded to achieve this outcome. If, at an early stage, environmental constraints are identified that are likely to prevent the project proceeding then the proponent is likely to abandon at that stage rather than commit to the time and cost of working up a full proposal and detailed assessment. This leads to the reality that most environmental assessments find in favour of the project (usually with a number of conditions). Unfortunately this engenders an incorrect perception that EIS processes are tokenistic.

The alternative suggested by the EDO is for the assessment team to be commissioned by the Planning Authority separately from the proponent (albeit with funds provided by the proponent). This has the disadvantage of divorcing the proponents design process from the environmental professionals, missing the opportunity to mould the design to specifically meet environmental objectives. It would also be more costly and time consuming.

The key concern is the probity of the professional process and a solution to that has been implemented at the Ginninderry project and could be adopted elsewhere. For the Ginninderry project an

independent peer reviewer has been appointed who reviews all environmental work, ensuring that the work done by all consultants is of the highest standard before it is presented to regulatory agencies.

Exemptions from Environmental Impact Statements

The EDO expresses a concern that the length of time granted for exemption from EIS processes under S211 of the PD Act may be excessive if tied to an EPBC approval timeframe. Their concern stems from a fear that, once granted, no further consideration need be given to environmental factors in the ongoing development of the site and that this is inappropriate as, for example, factors such as climate change may require differing responses over time. The EDO concern is unfounded. The EPBC program report, as approved by the Commonwealth Minister for the Environment, mandates a rigorous regime of ongoing monitoring with respect to the conservation reserve including the following:

- An annual report highlighting the implementation of the actions and relevant conservation outcomes achieved in the reporting period (financial year) will be published by the Proponent
- A review of both the relevant biodiversity measures and the Reserve management Plan every five years. The purpose of the review will be to summarise progress over the preceding five years in achieving the conservation gains as defined by the Program
- An independent audit of the Program every five years for the life of the Program. The purpose of the audit is to independently verify the outcomes being reported in the Annual and Program review reports.
- The Environmental Management Trust will be established on a framework of adaptive management which is described by the guide to undertaking strategic assessments (Aust. Government, 2011) as a systematic process for continually improving management practices through learning from the outcomes of previous management. Climate change and new species listings are given as examples of matters that would be accommodated through the adaptive management approach.

With regard to the development area portion of the site (i.e. outside the conservation reserve) all development will be the subject of individual development assessment processes which will necessarily require consideration of any emerging environmental matters. For example further design requirements to address climate change impacts may be incorporated into the Territory Plan and would therefore be required to be adhered to. The identification of a new endangered species would require action under the Nature Conservation Act and any DA that may impact the species would be assessed in the light of requirements prescribed by, for example, a management plan for the species.

It is incorrect to assume that in the absence of a full EIS that no consideration is given to the natural environment. The ordinary DA process in fact requires a complete consideration of the environmental impacts of a proposal. For example:

- Development applications that may impact on a "*protected matter*" must be referred to the Conservator (PD Act 147A)
- For a merit track DA the Authority must consider "*the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts*" (PD Act 120(g).

Protections for ACT listed species

The EDO recommends that "*...the Planning and land Authority apply the law with respect to the protection of ACT listed species.....*".

We are able to advise that in our experience at Ginninderry and on other projects the Planning and Land Authority applies the law relating to listed species with a very commendable level of diligence.

Integrating climate change into the development application process

The EDO seems to be unaware of a number of provisions related to energy efficiency (and consequently climate change) that are already present within the ACT planning control regime. These include, for example:

- Strict controls on block orientation to ensure maximum solar access
- Requirements for all new housing to achieve six star energy ratings
- Requirements under the estate development code for all housing to be within walking distance of public transport

It is also of course relevant that the ACT Government has committed to a 100% renewable energy supply which of course means that household electricity will be renewably sourced. This is a very substantial element in the overall community response to climate change but does not require any action at the planning control level.

We trust that these comments are of assistance to you and the Committee and would be happy to elaborate on them or provide further details if requested.

Yours faithfully

David Maxwell
Managing Director

c.c.: Ms Suzanne Orr MLA,
Mr Mark Parton MLA

Attachment: Macroplan Dimasi advice Jan 2018.

MacroPlanDimasi

19 January 2018

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GINNINDERRY, ACT – ECONOMIC AND SOCIAL IMPACT ASSESSMENT

This report presents a high level assessment of the economic and social impacts associated with an appeal lodged on 1 September 2017 by the Ginninderra Falls Association (GFA) in the ACT Civil and Administrative Tribunal (ACAT).

The appeal has been lodged in relation to the proposed Ginninderry Estate for which a development application was recently lodged to enable the development of the first stage of the estate. We understand from our client that the result of this appeal is a minimum 6 month delay in the construction of the project as the matter is heard in the ACAT.

1 Site context and development overview

The Ginninderry Estate is located in the north-west of the ACT, straddling the border with NSW. The Estate could potentially yield in the order of 11,500 new dwellings (pending approval), supported by the new community facilities, open space, retail and other amenities. We note the following key points of relevance to the matter which is the subject of this report:

- The first stage of development is located within the ACT border and incorporates 350 lots for the development of new residential dwellings.
- We understand that 350 prospective home buyers have already entered into contracts to buy these lots and face a 6 month delay in occupying their dwellings as a result of the appeal lodged by the GFA.
- We understand that a civil works contract worth $30 million was to be entered into and this will be delayed by 6 months.
- Affiliated sub-contractors would also face similar issues around delays.
- Individual building companies/businesses would be developing the residential lots.

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2 Economic impacts

The development of the first stage of the Ginninderry Estate (i.e. 350 lots/dwellings) is estimated to potentially create around 1,050 direct jobs during the construction phase of the project. This would include immediate/on-site construction jobs, jobs associated with civil works, and other direct jobs (e.g. consultants associated with the project). (Refer Table 1).

Further to these direct impacts, would be second and third round multiplier impacts, distributed broadly across the ACT/NSW and national economy. We have not specifically modelled these impacts in this report.

The construction value of the 350 dwellings is estimated at about $95.5 million (in nominal terms), assuming an average construction cost of $250,000 in current prices and a timing of one year (i.e. 2019) for the development. A delay of 6 months would delay the realisation of this investment by 6 months (and its associated benefits) and would also have an escalation impact of around 2 – 2.5% (i.e. 4 - 5% p.a.), equating to $2 million.

We understand the preferred civil engineering firm awarded the civil works contract had ceased applying for new work following notification of the contract on the basis that it would be occupied with this job over the next year. Based on a $30 million (source: Riverview Developments) contract to deliver these services, a 6 month delay could lead to an CPI impact of around $320,000.

The sub-consultants associated with the delivery of the civil works (e.g. trades persons etc) will also suffer a 6-month delay, and may face similar issues as identified above (i.e. have not/cannot commit to new work on the basis of servicing contracts for the first stage of the Ginninderry project).

Some of the other flow-on benefits include retail expenditure by the prospective new residents as well as workers, contractors, government employees associated with the development of the project (including subsequent stages). Surrounding local centres and the businesses with these centres, like Kippax and Holt, would not see the benefits of the project realised for another 6 months.

The delay would result in a 6 month delay before the ACT Government can realise the stamp duty revenues associated with the individual lot 'sales' and any rates revenue associated with the project, and there would be a delay in the interest earned.

Table 1
Ginninderry - Potential economic and employment impacts*

Factor	Number
Economic impacts - production of dwellings	
Number of dwellings - Stage 1	350
Assumed staging (built in one year)	2019
Avg. construct. cost per lot ($) as at 2017	250,000
Avg. escalation rate	4 - 5% p.a.
Estimated total construction cost NPV (nominal)	95,552,188
Escalation impact from 6 month delay	2,126,267
Economic impacts - civil works	
Civil works contract ($) as at 2017	30,000,000
ACT CPI	2.1%
CPI impact from 6 month delay	319,824
Direct employment impacts per annum - construction (assuming all developed in one year)*	
Direct jobs - residential construction	350
Direct jobs - civil works	350
Direct jobs - other	350
Total direct jobs	**1,050**

**Approximately 1 job per dwelling per category*
Source: ABS; MacroPlan Dimasi

In addition to the above, we note the following potential economic impacts:

- Legal fees to defend the ACAT hearing: approximately $400,000.
- Additional rental payments to be made by those home buyers who are consequently renting due to delays in the occupation of their homes. Assuming an average rent of $400 per week, over 6 months, for 129 home buyers (note: number of purchasers renting has been provided by Riverview Group), this equates to $1.3 million. This additional rental expenditure could otherwise be spent servicing first home buyer mortgages.
- Loss of interest earned on potential rates and stamp duty revenue over the 6 month delay. Based on estimated rates and stamp duty revenue of $5.2 million, and an assumed annual interest rate of 2.0%, the loss of interest is estimated at $52,000 as a result of the 6 months delay.

3 Social and community impacts

Other social and community impacts identified include:

- Delays in the provision of community infrastructure within the estate for current and future residents. The 6 month delay essentially pushes everything out by six months.
- Personal costs for people who have entered into contracts, with their timing expectations now 6 months delayed. This means extensions to rental contracts, or additional expenses associated with movements in needing to find alternative rental accommodation.
- A delay in unlocking important housing supply in a relatively expensive housing market. Canberra's median house prices are third to Melbourne and Sydney, with the median now exceeding $720,000. Some of the product being provided at the Ginninderry Estate first stage is specifically designed to cater for the affordable housing market.

4 Summary of quantifiable impacts

A summary of the quantifiable economic/financial impacts are

- Economic impacts – production of dwellings: approx. $2.13 million.
- Economic impacts – civil works: approx. $320,000.
- Legal fees associated with ACAT: approx. $400,000.
- Stamp duty/rates: approx. $50,000.
- Additional rental costs for homebuyers: approx. $1.3 million.

Yours sincerely

James Turnbull

National Manager – Retail