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Submission Cover Sheet

Engagement with Development Application Processes in the ACT

Submission Number: 039 - Kingston and Barton Residents Group

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SUBMISSION TO ACT LEGISLATIVE ASSEMBLY
STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL
INQUIRY INTO ENGAGEMENT WITH DEVELOPMENT APPROVAL PROCESSES IN THE ACT

BY THE KINGSTON AND BARTON RESIDENTS GROUP

INTRODUCTION

This submission is by the Kingston and Barton Residents Group (KBRG), which is a community association representing the residents of these Inner South Canberra suburbs. KBRG is committed to enhancing the social, residential, environmental, cultural and economic qualities of the area to ensure the highest standards of livability. The objectives of KBRG include, inter alia:

6) *Provide an entity to represent, negotiate and lobby the ACT and Commonwealth Governments and their relevant agencies, tribunals and courts on matters of concern to Kingston and Barton residents, with particular reference to urban planning and community assets*

KBRG commends the committee for undertaking this inquiry and looks forward to participating in the public sessions regarding this matter. Our comments on the Inquiry's Terms of Reference follow.

COMMENTS RE INQUIRY TERMS OF REFERENCE:

1) *Community engagement and participation in the Development Application process including: a) the accessibility and clarity of information on Development Applications and Development Application processes, including Development Application signage; the Development Application finder app; and online resources*

KBRG comments:

- Current Development Applications (DAs) are generally accessible on-line. The clarity of information is variable and some details can be hard to read on screen.
- The Territory Plan and Regulations are also available on-line but these are very complex and it is hard to identify all the matters relevant to a particular DA. The applicant's required "Statement Against Criteria" can be helpful (if done well) but cannot always be relied on.
- The Territory Plan needs to be simplified and a property based information system for zonings and relevant provisions should be introduced.
- The DA App has not worked properly for nearly 12 months. It does not allow you to select notifications for more than a single suburb, additional information is only available as you click through various links – for example Territory Variations are not flagged on the map page.

- The KBRG has seen several occasions where DA signage has gone up days after the notification period has begun and also instances where the proponent has removed signage altogether. On one occasion the signage was witnessed in a skip bin on the property while the ACT Government reinstalled new signage – this needs to be better managed.

b) pre-Development Application consultation and statutory notification processes

KBRG comments:

- Community consultation will generally be most effective if carried out as early as possible in the process. Pre-DA consultation may help identify and resolve issues before final design and preparation of full documentation for DA.
- At present the thresholds for mandatory pre-DA consultation are set very high, e.g. a recent DA for a new six storey hotel on a prominent site in Manuka did not require pre-DA consultation despite its locational significance and controversial aspects such as removal of a 'significant' tree.
- Another proposal for a prominent site at Manuka Oval only letter box dropped the immediate area to state that a DA would be submitted at some time in the future. When the consultant firm was contacted they stated they had met their consultation requirements and no additional information would be provided – this was reported as such in the DA submission, and accepted as meeting ACT Government requirements.
- Letter boxing and notification needs to be expanded. The area impacted by a development form its size, associated traffic of visitation is more than the immediate block – particularly for aged care facilities, community/club developments, apartment blocks and businesses.
- KBRG **recommends** that the current mandatory pre-DA consultation should be extended to ALL DAs in the Merit and Impact assessment tracks and the guidelines for such consultation should be revised accordingly. All DAs in these categories are potentially contentious and pre-DA consultation would assist affected residents understand the proposed development's impacts and seek design changes as necessary before the formal DA processes.
- KBRG **recommends** that pre-DA consultation should be mandatory for any place listed on the ACT Heritage Register (including those nominated or provisionally registered).

c) the availability and accessibility of current and historical Development Applications and decisions in relation to Development Applications, including reasons for Development Application approvals, conditions or rejections

KBRG comments:

- Information on DAs can be difficult to access after decisions have been made on them and they are no longer 'active'. **Recommendation:** All DAs, including decisions, to be archived and made available through the EPSDD website.
- There have been several DA decisions where those opposing the decision have not received notifications. This process needs to be more robust.

2) The accessibility and effectiveness of Development Application processes, including:
a) The information provided in relation to the requirements for Development Applications

KBRG comments:

- Requirements for DA documentation at present say that the applicant only has to signify they have carried out pre-DA community consultation in accordance with the guidelines.

We **recommend** that a succinct report be submitted by the developer detailing neighbour and community comments and how the design has responded to these. This report needs to be regarded as an important part of DA documentation and be subject to rejection at the DA check stage if inadequate.

- The DA application form asks on page 3 for the applicant to 'Fully describe your proposal'. The descriptions given are usually anything but full and force the reader to interpret complex technical documentation. This is often the case with even quite major development proposals which might simply fully describe the proposal along the lines 'build a hotel'. KBRG **recommends** that the full description contain prescribed minimum information.

b) The current development assessment track system

KBRG comments:

- According to the EPSDD website, very few DAs are now considered under the 'Code' track, as many Code compliant DAs (including for single dwellings) are now able to be Exempted (by private certifiers) or have an "Exemption Declaration" issued by ACTPLA if there are "minor departures" from some Rules (e.g. building envelope, dimensions of required minimum open space).
- There is a particular problem with new dwellings replacing existing dwellings, where the impacts on streetscape and neighbours' amenity are often not adequately considered - there is little incentive to do so. It is therefore **recommended** that all such DAs (i.e. the redevelopment of blocks for one or more dwellings) should be in the 'Merit' track and subject to a DA.
- The community should not have to rely on Freedom of Information requests to find out details of exempt developments.

c) the Development Application e-lodgement and tracking system, e-Development

KBRG comments:

- The current tracking system does not provide much information about progress throughout the DA process. More detail on assessment stages, referrals etc. would be helpful.

d) Processing times for Development Applications

KBRG comments:

- Statutory DA processing times do not seem to bear much relation to reality. Given this, it is not clear what the purpose of the statutory times is, apart from performance reporting and giving the applicant an appeal right if the DA has not been determined within the set time (a right which seems to be rarely, if ever, exercised).

e) Retrospective Development Applications

KBRG comments:

- KBRG **recommends** that retrospective DAs should only be allowed where there are compelling grounds. These grounds should be set out in legislation. They should not be allowed simply on the basis of 'sin now and seek repentance later' especially when work is done in full knowledge that a DA would not be granted prior to the work being completed.

- Permitting developers to lodge a 'retrospective' DA, usually to rectify unapproved work, should be strongly discouraged. Retrospective approvals appear to be used to by-pass normal requirements (e.g. pre-DA community consultation) and this puts undue pressure on the assessment process to approve substandard design and building work.
- The KBRG was involved in one retrospective approval where the owner was a builder/developer/architect working from the building site in question – the ACT Government informed neighbours the preferred approach was 'education rather than enforcement'. At some point those with a knowledge of the system need to be held to account, particularly where more than one retrospective approval is sought for a single site.

f) Reconsideration and appeal processes

KBRG comments:

- It is not clear why there should be an opportunity for reconsideration after a decision is made on a DA. KBRG **recommends** that there should be clearly defined circumstances for when a reconsideration can be sought and this should not include substantially amended plans (which should be subject to a new DA).
- Pressure should be on the applicants to get their DAs 'right' and for the planning authority to make well based decisions.
- Where multiple resubmissions are made a dedicated review officer should be appointed.
- There should be clear guidelines as to when a reconsideration can be made and where a minor project can be elevated to the major projects review group - there needs to be a clear definition on hat is a 'complex development proposal'.
- Where a reconsideration is granted there should be mandatory site inspections to ensure compliance.
- On the other hand appeal processes have become very legalistic and expensive and a return to the earlier specialist planning and land tribunal would be welcome.
- Based on our members' experiences – it is unreasonable that many appeals are not proceeding in a David and Goliath battle of whether someone opposing a development can afford legal representation in ACAT. In addition previous cases and decisions should be made readily available for all attending ACAT.
- There needs to be a more transparent process within the system including the discretionary nature of when a presiding member can chose to accept or reject a previous decision as a precedent.

Heritage, Tree Protection and Environmental assessments

KBRG comments:

- KBRG **recommends** that if the planning authorities decide to not accept expert entity advice the reasons for so doing should be clearly and convincingly be set out in the decision.
- KBRG **recommends** that Entity advice should be included in all DA documentation on the EPSDD web site so objectors have access to it. It is insufficient to merely require the proponent to provide their own selective summary or simply to advise such advice has been sought.
- In relation to heritage matters all requirements listed as mandatory in the heritage regulations must be complied with. The word mandatory means such requirements are not negotiable.
- Planning legislation should not allow for any mandatory requirements in Heritage legislation or other entity legislation to be overruled.

- Heritage and tree protection should be a higher consideration than zoning and associated exemptions under the Planning Act, this is important to protect significant heritage as areas increasingly are rezoned for higher density, mixed use and commercial zoning and where the current precedent means schedule three of the Planning Act overrides heritage listings. An example being plot ratios in Heritage Precincts being exceed if there is a CZ5 zoning in conjunction with the heritage listing.

3) *Development Application compliance assessment and enforcement measures*

KBRG comments:

- The compliance function seems to be under-resourced and slow to act on complaints. Building certifiers (usually employed by the builder) cannot be relied on to independently identify and manage issues of non-compliance with approvals. This means that public interest in good building quality and safety cannot be assured.
- 'Education' is often seen as a solution even if it is clear the developer or builder is wilfully non-compliant and carries out such work at weekends when compliance staff are less available.
- When concerns and complaints are raised, for example by residents, no information is provided to them about what compliance measures are being followed up and privacy concerns are cited. This is not helpful in building public trust in the compliance system. It is also contrary to practice in other jurisdictions. Some basic information on the progress of compliance processes can be provided to concerned persons without violating privacy principles, as is done routinely with Commonwealth compliance regimes.
- It appears that the Minister for Planning is very reluctant to enforce breaches of mandatory requirements and other breached of the Planning and Development Act. This does not send the right message.
- The only inspectors available for weekend or long weekend periods are WorkSafe officers. Unless the work being conducted is unsafe (or without an approved DA than is hard to have them attend the site. Tree protection officers and staff who can issue a slopwork notification are not available on weekends and as such the KBRG has seen extensive works completed over Easter breaks and significant trees removed on weekends.
- As inspections are not carried out at the completion of approved work, there is significant opportunity for proponents to stretch the scope of approved works. Inspections should be conducted and penalties issued for non-compliance or work done outside of approved DA works.

4) *Development Application practices and principles used in other Australian jurisdictions*

KBRG comments:

- One emerging practice from other jurisdictions which should be considered for the ACT is the use of independent Design Review Panels that could advise the planning authority on more complex matters. We understand a joint National Capital Authority/ ACT Government Design Review Panel has been trialled on some projects and we **recommend** that to become a mandatory part of the process for larger, more complex or potentially contentious proposals.
- Ideally such panels should commence at the pre-DA stage, when it is more likely that a design can be readily modified, and provide an opportunity for neighbours or community representatives to be heard and see how the panel deals with design issues.

- KBRG **recommends** that the advice of the Design Review Panel is formalised and attached to the DA, along with a statement by the applicant as to how the design has responded to the panel's advice. In the recent case of the proposed hotel in Manuka, it was considered by the joint NCA/ACT Government DRP but the advice of the panel was not included in the DA documentation on the EPSDD web site. The panel outcome was reported by the applicant in a very perfunctory way and clearly ignored. Entity advice in relation to a significant tree was ignored by decision makers.

5) *Any other relevant matter*

KBRG comments:
We note the separate Assembly committee inquiry into Building Quality in the ACT and expect there will be some overlap between these two inquiries. We trust that the work of these inquiries will be coordinated to ensure consistency in their recommendations.

We request the committee review practices for accepting DAs from developers where they have already identified they are in breach of zoning or other regularity requirements, for example, where they have exceeded height limits or not met parking or solar access requirements. We believe this should be an automatic rejection of the proposal or an alternative processing/assessment practice be adopted that included more rigorous community consultation and assessment. There is an increasing trend of large developments submitting DAs in blatant non-compliance on the assumption that it will be approved 'for the greater economic good' and the threat that the developer could not proceed with the development without exemptions to regulation and legislation. We believe that the ACT Government should at all times stick to its agreed rules and regulations and only under extreme circumstances consider exemptions to this.

Thank you for the opportunity to make a submission on this important issue.

SIGNED

Rebecca Scouller
President
KBRG

3 August 2018