

**Legislative Assembly for the ACT  
Standing Committee on Planning,  
Public Works and Territory and Community Services**

**INQUIRY INTO DRAFT VARIATION TO THE TERRITORY PLAN No. 307  
Griffith, Section 42, Block 15 - Change of Zoning**

***Change of zoning from Commercial CZ6 Leisure and Accommodation to RZ4  
Medium Density Residential Zone***

**SUBMISSION**

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**Introduction**

The principal aims of this submission are as follows:

1. To provide reasons why the proposed rezoning is contrary to sound town-planning principles, is without justification and will cause significant damage to the 'Garden City' character of Section 42 of which the subject land is part.
2. To identify the land use, landscape and built form character of Block 15 in the context of Section 42, the latter being the designated district open space area for Griffith and South Canberra, in order to highlight its environmental and social significance.
3. To establish that there is no justification for the proposed rezoning, that is, no justification for the initial decision of the Stanhope Government to assign of the order of 60% of Section 42 to Brumbies Rugby purportedly as a device to give the Club financial security, also no justification either for ACTPLA's decision to formulate Draft Variation No.307.
4. To show that ACTPLA's evaluation of my March 2011 Submission on the Draft Variation as part of the public consultation process is biased, inaccurate and is not in accordance with the Authority's impartiality obligations under the Planning Act and the Territory Plan.
5. To highlight current and future societal needs that the current Territory planning system is not meeting, which will continue to worsen until the Assembly, the Gallagher Government and the Environment and Sustainable Development Directorate, all recognise the need for the kind of drastic and fundamental changes that community groups in growing numbers are demanding.

The following submission to the Committee is derived from my submission to ACTPLA dated 12 March 2011 objecting to Draft Variation 307, with additional comments in the light of the Authority's evaluation of Consultation responses by the Griffith/Narrabundah Community Association (GNCA) and 113 others. A copy of my March submission is attached (see Appendix).

## **PART ONE - THE 'PUBLIC INTEREST' VALUE OF BLOCK 15**

### **Physical Character**

ACTPLA in its Consultation Report hardly ever refers to the physical character of Block 15 and Section 42 seeing each of them only in terms of 'zoning' and, even then, not in terms of what the zoning actually is but rather in terms of what the Authority thinks it ought to become.

Geographically the significant entity is the whole of Section 42, which is designated by TAMS as 'district playing fields' serving the residents and sporting clubs of Griffith and South Canberra, of which Block 15 is one in a series of recreational and environmental areas including two ovals, a children's playground, public tennis courts, a guides hall, former bowling green areas now used by the Brumbies for close quarter training, the former bowling club house and associated parking areas, the Brumbies recently built gymnasium, substantial stands of exotic and native trees and shrubs covering roughly one third of the overall site in a grassland setting and extending along two natural drainage lines comprising a major and minor creek, which include a natural spring, and lastly a complex system of flood control basins constructed by the NCDC in the 1970's modulated from the original contours of both creeks that is recognised in professional planning and design circles as an outstanding example of landscape design.

For local residents, visitors and tourists Section 42 is an enclave of outstanding beauty, especially in spring when the exotic species display their fresh green new growth and later the gold and red tones of the fall.

Geographically Section 42 is situated in one of the few extant Molonglo River tributaries on the southern side of Lake Burley Griffin that has not been buried by urban development. It exists mainly as a chain of recreation parks starting in the south on the slopes of the Red Hill Nature Reserve (Canberra National Park) and thence via the Boys Grammar School Playing Fields, Flinders Park, Section 42 Ovals and Griffith Park, Manuka Oval, Telopea Park and ending at Bowen Park and East Basin on the foreshores of Lake Burley Griffin. This system constitutes the most extensive series of small-scale recreation and leisure parks in Canberra and despite the interruption by a portion of the Manuka business area it has unique landscape and heritage values that until now have been protected from unwarranted development.

### **Land Use and Zoning**

Section 42 is subdivided into nine lease parcels but the subdivision pattern is not apparent because there are no boundary fences or markers of any kind. To the eye of the casual observer it presents itself as uninterrupted public recreation space with seamlessly merged networks, including creek lines, mixed stands of exotic and native trees, native and irrigated grasslands, informal dirt tracks and sympathetically scaled clubhouse and glassy gymnasium.

Prior to Territory self-government, Section 42 was classified by the NCDC as 'public open space' save for Block 15, which was 'restricted access open space'. There was no zoning system in the ACT in those days. The policies of the NCDC were given legal effect by means of the 'purpose clause' contained in the lease documents.

The Territory Plan zonings for Section 42 and Block 15 are basically unaltered from the original NCDC prescriptions. Section 42 is now classified as 'urban open space' except for Block 15 that is zoned 'commercial leisure and accommodation' but its lease purpose clause allows "bowling club and sporting club" uses. Contrary to the view put forward by ACTPLA in its Consultation Report, in a leasehold system as distinct from a freehold system, it is the lease that defines land use entitlements not the Territory Plan zoning.

In section 3.2.3.4 of its Report, ACTPLA lists a mixture of current bowling club zonings and club numbers, as follows:

- CZ6 Commercial Leisure and Accommodation (4)
- PRZ2 Restricted Access Recreation (2)
- CZ2 Business (2)
- CF Community Facility Zone (1)

It is obvious that there is no obvious logic or consistency here, which is a constant criticism of the Territory Plan procedures generally. If ACTPLA adopts the same stance as it is taking in the case of Block 15, then it is very possible that seven of the these nine bowling clubs will shortly cease to exist. There are a number of reasons that transcend planning policy that justify a major investigation into their prospects of ongoing sustainability.

For financial and environmental reasons, such as water costs, there might well be no bowling or golf clubs remaining in Canberra in about ten years time. Of particular concern in this regard is the continuing push by the Economic Development Directorate encouraging real estate and property development interests to wrest control of concessional leases from community clubs for purposes of rezoning and building development, aided and abetted by ACTPLA's 'anybody is entitled to seek a zoning change for their property' stance.

### **Heritage Considerations**

As a result of research by GNCA members over many months Oval No 1 was given provisional protection by the Heritage Council in May 2010 and full registration in October 2010, which accordingly saved both the Griffith Ovals because ACTPLA was forced to reject the Brumbies first DV application.

The Heritage Council has now (Nov.3<sup>rd</sup>) granted provisional protection to Manuka Oval in light of proposals by the Government to increase its seating capacity, install high mast floodlighting and a range of other changes, which might threaten the scale and character of the Oval complex. In these and other respects the heritage significance of the Griffith/Manuka/Blandfordia district is progressively being recognised and promoted from a tourism standpoint of which Section 42 forms part.

The submissions made by the GNCA and others have included references to the rest of Section 42, which because of insufficient resources the Heritage Council has not been able to examine. Telopea Park and Manuka Circle are definitely worthy of heritage consideration because they are relatively intact examples of Walter and Marion Griffin's 1913 planning work. The National Trust (ACT) has published strongly expressed support for heritage listing of Griffith's 'garden city' qualities in the following terms:

*This form of planning was aimed at creating a pleasant social character of urban living. Curvilinear street layouts often following the natural contours, planned siting of reserves, creation of space, tree plantings and hedge plantings, visual recognition of the natural landscape and a consistency in the form and siting of housing were all fundamental principles in this kind of planning.*

In my May 2011 submission I referred to the heritage importance of what the NCDC envisaged as being a proposed 'Griffin Heritage Trail', which included the Red Hill to Bowen Park string of linked parks that reflects the ideas and efforts of the National Capital's early planners and designers. ACTPLA has simply dismissed this information out of hand because it couldn't obtain verification from the NCA, which as is well known is totally bereft of any planning or architectural personnel. This makes a mockery of ACTPLA's statutory obligation to give due consideration to information from the community and heritage groups, town planners, architects, landscape designers, engineers, land surveyors, valuers and cultural historians, all of which is intended by the enabling legislation to provide inputs into the Authority's evaluation of re-zoning applications such as this present one.

ACTPLA's Consultation Report contains frequent reference, as does the Territory Plan's Statement of Strategic Aims and Directions, to the importance of maintaining Canberra's 'garden city' character. However, when confronted with Section 42 and Block 15 Griffith, the Authority's staff have totally failed to recognise that geographically and engineering-wise it is district open space that is protected on all four sides by local streets thereby being protected against adverse environmental impacts emanating from adjoining residential areas.

Section 42 is a classic 'garden city' design based on principles laid down by Sir John Sulman and the Capital Advisory Committee in the early 1920's; adhered to by the Federal Capital Commission in the '30's; the Department of Interior in the '40's and '50's; and the NCDC during the final three decades of Commonwealth administration in its planning of neighbourhoods and public open space.

These attributes are important from a tourism standpoint. All Australian inland cities and towns that are remote from coastal environments invariably make the most of local heritage aspects in the form of historic buildings, nineteenth century precincts, town halls and public spaces, which are supplemented by convenient bus and visitor parking, restaurant and retail outlets and a high overall standard of municipal maintenance. Manuka and its surrounds have been signposted by the Government as an attractive tourist destination in these respects, which a block of flats in the middle of the local park won't help.

Beyond the Central National Area generally Canberra does not fare well in these respects and as a consequence tourist penetration throughout the rest of the city is poor, however, Manuka and Kingston districts are the exception.

Andrew Fagan, in the Brumbies first rezoning application, placed a lot of stress on the importance of the ambience of Griffith's Section 42 treed open spaces and its proximity to Manuka's restaurants and shopping facilities that greatly assist the Club in attracting elite footballers from outside the ACT.

There are now growing signs that the Brumbies might decide to stay put on Block 15 because of initiatives by the new coach, Josh White, to centralise player activities and restore the Brumbies to being a strongly localised club whose players will play with ACT teams after the Rugby Super 15 competition is over, rather than decanting to interstate competitions as happens at present (Canberra Times. 9.9.2011). Under this scenario training programs would increase from about 12 weeks a year to something like 30 weeks, making for a much greater utilisation of the Club's Block 15 headquarters site.

### **Adverse Environmental Impacts**

The Planning Report engineering consultants have concluded that the development of Block 15 would not impede the operation of the flood retention basins if the ground level of the apartment buildings is raised above the retention basin flood limits. Given the substantial catchment area that extends back into the Red Hill ridge, this highly localised study is not sufficient to draw reliable conclusions in this respect.

More to the point, however, the engineer's report fails to recognise the role of the retention basins in slowing surface runoff during average rain events so as to recharge the ground water table. Roughly 40% of Section 42 playing field and forest areas are watered in this manner, which has been an important factor in enabling them to withstand the recent decade of drought. The proposed building development would substantially reduce the effectiveness of this system in every respect due to, a very large excavation for an underground car park, land filling in the vicinity of the creeks and ditches, and diverting stormwater into underground pipes and steep-sided concrete-lined channels.

All of this would be going against the grain of municipal engineering practice that, in the aftermath of a decade of drought in Southern Australia, is beginning to favour greater use of open channels together with promotion of associated wetlands in order to boost groundwater recharge processes. Some of that thinking has been reflected lately in public statements by ACTEW Corporation. Telopea Park, of course, is already halfway to such a system.

Of equal concern is that the urbanisation of Block 15 would breach the environmental protection barrier provided by the four streets that delineate Section 42 (Austin Street, Flinders Way, Murray Crescent, Captain Cook Crescent), which has been standard practice in the planning of school playing fields and local open space from the outset in 1918. A large apartment building and its residents would have a devastating effect on the rest of Section 42's ecologies, namely, forest, grassland, soil erosion, natural springs, playing field surfaces, ground water recharge and air quality.

Residential flat development in accordance with the RZ4 Medium Density Residential Code would conceivably accommodate 150 flats, 230 residents, 280 motor vehicles, 50 odd cats and dogs and about 3-5,000 square meters of pavement. Ovals 1 and 2 would inevitably become private open space for daily walks by these residents, with or without dogs. Their cars would be a significant source of pollution from motor vehicle fuel, sump and bearings oil, washing discharges, increased litter on the playing fields and overflow congestion on Austin Street, Captain Cook Crescent and Flinders Way, already loaded up by commuter parking. In addition, the Government is likely to be pressured for the removal of trees on remaining public land and on Block 15 itself, on grounds that they interfere with sunlight, natural ventilation and outlooks.

Such adverse factors are as yet unknown, however, they are predictable and the planning regulations require that they be investigated as part of the Brumbies Planning Report, which hasn't been done.

### **Block 15 should be zoned PRZ2 Restricted Access Recreation**

The Planning Act 2007 requires ACTPLA to evaluate the option of whether the current zoning is the most appropriate use of the land and accordingly leaving the current zoning intact. ACTPLA has not complied with this requirement.

Due regard has to be paid to the significant history and special qualities of Section 42. It is the only district open space that is centrally located for the residents and community organisations of South Canberra.

It has taken almost 100 years and the contributions of numerous highly skilled designers and administrators to produce a public recreation space of such beauty and usefulness. It is undeniably an important work of art and should not be set aside by the Government and ACTPLA for such a selfish and unworthy proposal.

According to TAMS parks and gardens staff, Section 42 is the most sought-after location in South Canberra for sporting organisations wanting to hold major events on unenclosed ovals due to its outstanding ambience, attractiveness and proximity to Manuka's eating and retail facilities.

To sacrifice this important public asset to shore up the dubious finances of a private football club and to spare the Government from political embarrassment in the making of budget appropriations to football clubs generally, simply beggars belief.

Throughout the 22 years of self-government there have been very few improvements of any significance on Section 42. For locals and parents with young children access is very difficult because the surrounding streets are packed with commuter's kerbside parking. There are no suitable pathways and few seating facilities for the elderly. The open spaces are out-of-date as far as contemporary needs are concerned. A master-planned improvement program is critically needed in order to identify and realise its latent potential in response to changing outdoor recreation needs.

Residential population decline in South Canberra has turned around since 1986 from a low of 21,000 to an estimated 26,000 in June 2009 and rising. According to Chief Minister's Department, population forecasts for South Canberra are projected to reach 40,000 by 2022, an increase of 14,000 residents with Kingston and Griffith being the most active suburbs. There will accordingly be a need to not only preserve and update Section 42 recreation capacity but further afield to restore the Griffith neighbourhood centre open space and an expanding Red Hill school's playing field.

In April 2010, FOI documents reveal that the Chief Planning Executive (Savery) wrote to Andrew Fagan in connection with deficiencies in the Brumbies Planning Report. ACT Sport and Recreation (TAMS), as the custodian of Section 42, requested information on the likely impacts for other Section 42 recreational users, including the Captain Cook Park children's playground users. The Brumbies failed to respond. ACTPLA was itself concerned that the range of uses in the CZ6 Commercial Leisure and Recreation zone could squeeze out community recreation uses for more commercially attractive new developments.

The irony is that ACTPLA is the responsible authority for the investigation and forecasting of future recreation and sporting facilities needs. In hearings before the Assembly Planning Committee's Inquiry into the extension of RZ3 and RZ4 zonings in North Canberra, TAMS explained in evidence that it relied on ACTPLA to assess future recreation needs and identify suitable locations and sites accordingly. ACTPLA was unable to respond, simply to state that 'the retention of existing open space areas generally is a vital priority', a view that Minister Andrew Barr (in attendance) strongly supported.

The fundamental problem here is not only the lack of consistency and the bending of policy rules when it suits the Government's budget priorities to do so. It also highlights the fact that ACTPLA no longer operates as an urban planning agency with the capacity to carry out investigations and provide information and guidance to the Government and Territory agencies. It has become merely an office-bound, development applications processing organisation, with the result that its *modus operandi* is having disastrous effects on the built environment and residential amenity throughout the whole of Canberra.

## **PART TWO – PROPOSED REZONING OF BLOCK 15 IS UNJUSTIFIED**

### **Propping up the Brumbies Financial Situation**

The Stanhope Government's justification for this project was outlined by the Planning Minister, Andrew Barr, in his response to a question from M/s Caroline Le Couteur at a meeting of the Assembly Standing Committee, on 24 November 2009:

*The history of the Brumbies has very much been a year-to-year proposition in terms of their financial situation ... My view is that there is a limit to the amount of direct, off-budget, ACT Government sponsorship that can be made available to national league teams ... There is a range of ways that I believe the people of Canberra get a direct benefit from the Government's support of*

*the Brumbies ... Then of course, there are all of the intangible benefits that come from having successful sporting teams in international competitions.*

*I have indicated, as planning minister principally, a willingness to examine the proposals that they have put forward ... The rationale for it would be to provide the underpinnings for the Brumbies operations into the future and to enhance their training facilities.*

On 11 December 2009 the Chief Minister, Jon Stanhope, confirmed his support on ABC666 talk-back radio and again on 22 January 2010 in the Canberra Times, as follows:

*The rezoning and sale of Block 15 (the former South Canberra Bowling Club land) for medium density residential development would be in accordance with urban intensification objectives.*

*The proposals for Block 15 and Block 17 (the Griffith Ovals) were justified because of the significant benefits to the ACT. Despite the loss of open space it was not unreasonable for the Government to sell or sub-lease the oval to the Brumbies. Block 17 would not be given away free and the Brumbies would have to pay a fair and reasonable price.*

*It was up to ACTPLA, as an independent and impartial authority, to evaluate the proposal in light of the Brumbies Planning Report.*

*He stated that everybody was entitled to exercise their democratic right to make application to vary the Territory Plan and that none of the zonings were exempt from such applications.*

*The Chief Minister has issued instructions to Mr David Dawes, Land and Property Services head, to take whatever steps necessary to deliver the project.*

It has turned out subsequently that on closer examination, by community groups and the GNCA, the assertions by the Brumbies about the Club's financial situation and the feasibility of its development scheme have not only not been validated, they are also vague and misleading.

### **Giving the Brumbies Financial Security**

It is not possible for the Brumbies to achieve long-term stable financial security because the Club is not an enduring business entity. As Andrew Fagan has explained in part in his evidence to the Committee, it is a 'franchise', one of fifteen established by a consortium of television, radio and print media led by News Ltd as a source of broadcast material.

A McDonald's 'Big Mac' hamburger restaurant is a typical franchise where the operators don't own the premises that are simply sales outlets for the corporation's products. If an outlet consistently fails to maintain a specified level of sales, then the operator will be replaced or the outlet closed down. None of the Rugby 15 clubs in Australia own their own ground. Their main purpose is to provide high salaries for

elite rugby players and coaching staff, many of whom leave Australia to play in Asian and European competitions after the Super 15 competition has ended.

In the last few years the Brumbies, like the Raiders, has morphed into a feeder club for other capital city teams who tend to have stronger financial backing from private enterprise to supplement player payments and arrange opportunities for well-paid part-time employment. Apparently not much can be done about this in the ACT's relatively small private sector economy and, in addition, the Brumbies situation is being made worse by poor performances on the field and falling crowd numbers.

The unsubstantiated claim made by the Brumbies that the Club lacks the degree of financial support that the Raiders get from the Queanbeyan Leagues Club and other local organisations and accordingly has significantly less annual income, is also very dubious.

Last year, according to a media report under the heading "ACT Government bales out Brumbies", Andrew Fagan in an address to the Club's foundation members and sponsors stated that the Brumbies had budgeted to raise \$12 million by its own efforts in 2009 and had received a further \$6 million from Australian Rugby for player payments giving a combined income of \$18 million to cover the Club's total operating costs for the year.

In a Canberra Times news item in May 2010 on the ACT Government's increased budget appropriations to the three football codes, it was reported that the Raiders income in recent years was around the \$18 million a year level.

It would appear that the income levels of the Brumbies and Raider clubs are not all that different, which throws into doubt the Barr and Stanhope statements about unequal financial capacities of the two clubs as the justification for a highly unorthodox form of Government support for the Brumbies. If the figures are incorrect then it would surely be a simple matter for the Brumbies to correct them.

On the question of development feasibility, a group of local residents having relevant professional expertise carried out a provisional project feasibility study in July 2010 of the Brumbies development proposals, as outlined in the first Planning Report. The conclusions from this work were conveyed to Minister Barr in a letter from GNCA urging that the Treasury make a more thorough examination of what seemed to be an unreliable proposition.

The figures relating to the re-zoning and subsequent development for sale of a 150-unit apartment building on Block 15, were summarised as follows:

|                                                           |                  |
|-----------------------------------------------------------|------------------|
| Block 15 Current Value (concessional lease)               | \$3.0M           |
| Block 15 Enhanced Value after Re-Zoning                   | \$19.5M          |
| Betterment Value                                          | \$16.5M          |
| Change of Use Charge @ 75% Rate                           | \$12.375M        |
| Residual Land Value after payment of Change of Use Charge | \$4.125M         |
| Enhanced Value of Land for the Brumbies                   | <u>\$7.125M</u>  |
| Developer's Profit after sale of 150 units                | <u>\$15.0M</u>   |
| ACT Treasury Receipts from betterment and stamp duty      | <u>\$16.375M</u> |

## Proportional Shares

|              |     |
|--------------|-----|
| Brumbies     | 18% |
| Developer    | 39% |
| ACT Treasury | 43% |

Even though these might be no better than ‘ballpark’ figures, nonetheless they do give an indication that the principal beneficiaries in the final ‘wash up’ would be the Government and the Developer. The return of around \$7 million to the Brumbies, on the other hand, would fall a long way short of the amount needed to guarantee the financial future of a club with operating costs of \$18 million per year.

This presents a very different picture to that posed by the Minister and the Chief Minister in their late-2009 pronouncements and certainly doesn’t constitute adequate justification for the purposes of Part 5.3 of the Planning Act that is referred to on page 12 of ACTPLA’s Consultation Report.

### **ACTPLA/Brumbies Justification on Urban Intensification Grounds**

A constant underlying theme in the Planning Report, the Draft Variation and ACTPLA’s Consultation Report, is that the provisions of DV307 are consistent with the ‘urban intensification’ provisions of the Territory Plan, the Canberra Spatial Plan 2004 and the recently released Draft ACT Planning Strategy. This is accordingly offered as a justification by ACTPLA that the Draft Variation should be approved. The goal of urban intensification throughout the two-year duration of this rezoning project has been strongly backed up in the media by Jon Stanhope, Andrew Barr and the former Chief Planning Executive, Neil Savery, despite the fact that the phrase ‘urban intensification’ does not appear in the Territory Plan’s Statement of Strategic Directions (Section 2.1). On the other hand, the conservation and protection of all forms of open space and recreation facilities does.

Collectively these actions are a repudiation of the assurances that were given by all of the above individuals when the Garden City Variation (DV302) was the subject of public consultation, to the effect that urban intensification would not take place in low density detached housing suburban areas. RZ2 suburban core zone areas have been instituted for precisely that purpose and are being extensively utilised throughout Griffith and South Canberra. The collateral is that conserving the stock of community recreation land and facilities are critical to offsetting the loss of private garden spaces.

ACTPLA invariably refers misleadingly to Block 15 as being zoned ‘commercial’ but in fact the zoning is ‘commercial leisure and accommodation’. More to the point, land use entitlements in the ACT are defined *prima facie* by the conditions of the lease, not by the Territory Plan zoning, which in this case is for a bowling club or sporting club. Both the lease conditions and the zoning in any event permit the development of a clubhouse, gymnasium, outdoor recreation areas with associated car parking, which is what exists and it looks like community recreation space not like commercial development.

There are no Territory Plan strategies that explicitly justify drastic changes to the zoning and development of Block 15 in the manner proposed in DV307. The only supportive references in Part 2.1 is:

- *Section (1.9): Urban expansion will be contained in order to minimise impacts on natural and rural areas.*

On the other hand, there are ample strategic directions that highlight the importance of community recreation and urban and restricted open space, as follows:

- *(1.18) Provision will be made for a comprehensive range of readily accessible community, cultural, sporting and recreational activities distributed according to the varying needs of different localities and population groups*
- *(1.19) A variety of open spaces types will be provided in each district or local area to meet the diverse recreational needs of residents and visitors, and to contribute to community health*
- *(1.20) Planning policies for community facilities and open spaces will encourage suitable use and flexible design to allow for changing needs*
- *(2.10) Adequate provision of open space throughout the Territory will receive a high priority. Open space will be planned and carefully maintained as an integrated hierarchal system that provides for a diversity of sport and recreation facilities, contributes to the legibility and character of urban development, is cost-effective to maintain and assists in the effective management of stormwater*
- *(2.16) Retention of Canberra's unique landscape setting including the integration of natural and cultural elements that create its 'garden city' and 'bush capital' style will be awarded the highest priority. Special attention will be given to safeguarding visual amenity, protecting vegetation and other important features within the established urban landscape, and ensuring the high quality of environmental design in new developments or redevelopment.*

Section (2.16) encapsulates the strategic justification for retaining the CZ6 zoning on Block 15. In light of future health and recreation needs, however, it would be far more preferable for Block 15 to revert to a restricted or unrestricted open space classification depending upon whether the Brumbies stay or decide to go elsewhere.

#### **ACTPLA's Justifications included in DV307**

Contrary to its statutory obligations ACTPLA fails to provide any reasons of its own, derived from its evaluation of the Brumbies Planning Report and Public Objections, that justify the provisions of DV307.

ACTPLA's reasons or justifications, which have been 'lifted' unvarnished from the Brumbies Report (2.4 Reasons, page 6), are as follows:

- The proposal will increase housing choice in the Griffith/Forrest area
- The proposal will further assist in offsetting population decline in South Canberra
- The proposal is consistent with the Territory Plan's Statement of Strategic Directions

- The proposal is consistent with the key principles of the Canberra Spatial Plan

None of these propositions have 'Strategic Directions' status in the Territory Plan. Also there is no evidence provided in the Planning Report or ACTPLA's Consultation Report showing how any of the above benefits could be realised.

### **PART THREE – ACTPLA'S REPORT ON CONSULTATION**

#### **Jon Stanhope's 'Independent and Impartial Authority'**

In its original assessment of (a) the Brumbies development applications for Block 15 and 17 together, and now for (b) Block 15 alone, ACTPLA has made no investigations of its own. It has relied wholly on the Planning Report prepared by the Brumbies real estate consultants. It also received meagre responses from four government agencies all of which are constrained by a lack of professional staff resources. In the case of the NCA, its planning operations are defunct.

ACTPLA's behaviour throughout this two-year ordeal for local residents has been strongly biased in favour of the Proponent. This accords with the Authority's public image of developer bias that is the subject of complaints to the Government from community groups throughout Canberra generally. The Government's response has been that the Planning Authority and the role of Chief Planning Executive seem to have disappeared altogether under the mantle of the "Hawke" reforms to the public service.

In local and state government planning jurisdictions in other parts of Australia, in the case of large or complex land development projects, private enterprise proponents are required to provide funding for land use and environmental investigations to the responsible government agencies in order to preserve the appearance and the reality of balanced objectivity. The practices in the ACT are the exact opposite and are having a marked tendency to corrupt due processes.

ACTPLA's comments in the Consultation Report (3.2.2.3) that the issue raised by objectors, namely, that 'the status and validity of the Planning Report are questioned', has been responded to as follows:

*If ACTPLA were to commission and assess all planning reports it may result in a perceived or actual conflict of interest. In that scenario ACTPLA would scope, prepare and then assess all planning reports. Under the current arrangements, ACTPLA scopes and assesses the planning report, which is prepared by the proponent be it an ACT Government agency or a private entity.*

The sheer depth of professional ignorance underlying this statement is frightening.

The fundamental role of State town planning authorities and local councils in the Australian States is to scope, prepare, assess and implement the conclusions emanating from town planning surveys, investigations and technical reports. Until the Stanhope Government's reforms of the Territory planning administration starting in 2004 and continuing, these were the orthodox procedures utilised in the ACT for the previous 90 years. There is a pressing need to get back to them.

Experience has shown that developer-produced planning reports are notorious for evasions of environmental issues and distortions of facts. Because ACTPLA has no capacity to carry out countervailing investigations of its own, developer viewpoints tend to prevail. The bias that pervades ACTPLA's Consultation Report confirms that this is what has happened in the case of this project.

### **Consultation Report - Mistakes and Miscomprehensions**

In the past two years Griffith residents in varying degrees have perused several thousand pages of technical documents related to the Brumbies DV application, been involved in dozens of site inspections, written numerous articles and letters for publication in the Canberra Times and the Southside Chronicle, sought help from professional consultants on a 'pro bono' basis and expended thousands of dollars on documentation, all because the ACT Government has pushed the burden of defending the case for protection of an important public asset, which is indubitably a governmental responsibility, onto the reluctant and ill-equipped shoulders of the local community.

On the other side of the same coin, one or two ACTPLA development control officers, possibly without town planning qualifications, will sit behind their desks for several weeks producing a Consultation Report that is riddled with mistakes and miscomprehensions, who might never have seen the subject land or the neighbourhood likely to be affected.

I don't propose to refer to the details of every misinformation contained in ACTPLA's Consultation Report, however, I do wish to highlight what, in my professional opinion, are some of the key issues that the Committee and the ACT Assembly ought to be apprised of.

*ACTPLA Statutory Obligations:* The planning and land authority has the following functions: prepare and administer the territory plan; plan and regulate the development of land; advise the ACT Assembly on planning and land development; decide applications for approval to undertake development.

The Territory Plan is a law of the Territory, which means that ACTPLA has a statutory obligation to uphold the law and that an application to vary the zoning of a land parcel must accordingly be summarily rejected by the Authority. There is not a democratic entitlement in Territory law that entitles property owners to seek rezoning of their land, on the contrary, if anything there is a democratic obligation not to do anything that is contrary to Territory zoning laws.

Under the provisions of the Australian Capital Territory (Self-Government) Act 1988, the ACT Planning Authority is responsible to the ACT Legislative Assembly for Territory Plan administration, not to the Territory Government.

Spot Zoning: ACTPLA's response (3.2.2.2) states that Part 5.3 of the Act makes provision for the Territory Plan to be varied both holistically, as part of a broad scale review every 5 years, if required, and on a case-by-case basis. Part 5.3 does not contain a reference to a 'case-by-case basis'.

There is a fundamental town-planning objection to such a practice in that it isolates the subject land from adjoining land and from related natural, social and economic environments having mutual inter-dependencies.

On a 'case-by-case' basis means that known prospective development impacts on roads and streets, parking, public transport, recreation space and community facilities infrastructure will not be taken into account by ACTPLA thereby storing up adverse environmental consequences that should and could be avoided. Examples of this very thing are particularly rife throughout Inner North and South Canberra already.

More than 1,000 residential units are in the planning and development pipeline within 1-2 kilometres of the subject land scheduled for completion within 5-7 years or so. Several major commercial re-development projects are planned for Manuka. The seating capacity of Manuka Oval is to be expanded notwithstanding that the Oval has no dedicated public car parking. The Stuart Flats redevelopment, adjoining Section 42 diagonally, has a latent capacity of the order of 250-300 units under its RZ4 zoning that is likely to be more intensive by the time development starts. The transport implications of all of this work are complex and from public transport, traffic and parking standpoints will require a master plan, all of which ACTPLA is turning a blind eye to contrary to its statutory obligations.

Future Demand for Recreation Land: In its response at 3.2.5 ACTPLA claims that there will be no loss of public open space because although the site is located in a broader area of public open space it is not zoned for open space. This contention is fallacious because in fact the site is recreation land that is used for outdoor sporting activities and which in other locations has been classified as restricted public open space but, for reasons unknown, has been classified since the advent of the Territory Plan as 'commercial leisure and accommodation'.

What is even more fallacious is that in 3.2.7.1 ACTPLA claims that Griffith has a high level of open space per person relative to other suburbs of Canberra, completely ignoring the fact that it was planned and developed from the 1930's to the 1950's according to garden city principles and spatial standards very different from elsewhere in Canberra. The inference is that some of this generous parkland ought to be rezoned for residential flat development and too bad about Marion Mahoney Griffin's original subdivision design and Sir John Sulman's 'garden city' ideals.

Development Assessment Forum Procedures: The confusion in ACTPLA's collective mind has brought the Territory planning system to its knees and is destroying the built and natural environments of North and South Canberra in particular. This is because (a) there is no metropolitan planning activity to underpin the development control

system and (b) successive revisions of the Territory Plan since 2004 have stripped out all of the environmental objectives, principles and policies in order to speed up the processing of development applications and enhance funding for the budget.

The Territory planning system does not adhere to the stated principles of the Development Assessment Forum on which it is based. It fails because of imprecise language, clumsy structure, lack of sufficient of numerical controls such as plot ratio, site coverage, height limits and of comprehensive development control codes for each zoning classification, so that developers have to traverse the more than 1,000 pages that is the Territory Plan.

The appeals tribunal (ACAT), the professional institutes, the property industry and community groups, have all been saying to the Government for more than a decade that the planning system isn't working. Now the same interests are saying that it has collapsed completely and must be completely revised by the Government and the Assembly, however painful that might be politically.

A.J.POWELL, AO

10 Nov. 2011

#### **APPENDIX**

Planning and Development (Draft Variation Number 307)  
Consultation Notice  
Griffith Section 42 Block 15  
SUBMISSION  
Tony Powell  
12 March 2011