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Submission Cover Sheet

Engagement with Development Application Processes in the ACT

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The Committee Secretary
Standing Committee on Planning and Urban Renewal
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Madam/Sir:

Thank you for extending the deadline for submissions to this Inquiry. There are many observations and recommendations I would wish to make to an Inquiry of this sort but I trust that a relatively brief written submission can be supplemented and extended at a later date if need be.

As you probably know, in the past 8 years I've been heavily involved as a community member and planning professional in several disputes over DA handling and approvals, two of which resulted in appeals to ACAT where the community joined together to successfully overturn ACTPLA's consent. The latest of those is now listed for hearing by the Supreme Court in November, with Coles having argued that the legal capacity for ACAT to refuse any DA once it's been considered and refused and reconsidered is severely constrained by the wording of a subclause in the Planning and Development Act. That now poses the single biggest threat to the ACT's planning system, opening the door to a parade of zombie DAs.

Back in 2012-13 the ABC's Virginia Haussegger ran a series of stories highlighting the problems many Canberrans have suffered with private certifiers on adjoining blocks signing off on developments that breached important controls, abusing the certifier system. I remain concerned that the exemption powers granted to certifiers require oversight and the scope for abuse creates a cost to the community that hasn't been quantified but is nevertheless real. *I recommend that every knockdown rebuild proposal be subject to a DA, and appealable.*

In the course of preparing for mediation back in 2011-12, a small group of Dickson residents volunteered to investigate all DAs that had been processed in the previous 5 years within North Canberra's RZ2 zone. What we found was that every one of those had been approved, and when I went to Dame Pattie Menzies House to view the applications on the public register it appeared that key calculations such as GFA (which determines plot ratio) have often been fiddled to slide in just under the maximum allowable. The accuracy of the information provided by the applicant was not being checked. *I recommend that every DA prior to lodgement go through a rigorous system of fact checks, because as many community council members would agree there is a gigantic technical burden that has been shifted onto volunteers, and it means that rules have become so rubbery that the adverse impacts of what's being built are significantly greater than they should be.*

In the case that Dickson Residents Group eventually fought in 2011-12 and the most recent case involving Downer Community Association and North Canberra Community Council, we demonstrated that numerous calculations and claims supplied by the applicant were false and misleading and as mandatory rules were broken it was sufficient on the basis of those alone to refuse the DAs altogether. Since the figures supplied had not been interrogated, the assessment officers had apparently treated all the other non-compliance issues where qualitative criteria were not met as irrelevant. What both cases demonstrated were the importance of careful fact checking, which could be much more easily done if the applicant were required to provide an accurate model and drawings in an electronic format such as AutoCAD that can be readily analysed in addition to pdf files, and also that plans be made available to the assessing officers on paper at a 1:100 scale and become part of the public register. Viewing any large plans on a screen makes it extremely difficult to interrogate those plans properly.

As a professional planner working in NSW, WA and Tasmania, I was closely involved from the very beginning with the ushering in of performance based codes by the Commonwealth during the early 1990s. What struck me when I first began reading the Territory Plan's new Codes in 2010 was that for some bizarre reason the ACT has uncoupled the rules and criteria, divorcing them and treating them as independent, when the intention from the beginning was that the criteria would serve to explain the basis for and context of a rule in order that applicants appreciate what the rule is about and if for some valid reason they couldn't meet a minimum numeric standard they were then free to find good design solutions that responded to their particular circumstances and which they could argue on the grounds of **merit** with reference to the criteria.

The ACT's approach to structuring its development codes has inadvertently sterilised what was originally meant to be a progressive and enlightened response by the planning system to enable better architecture and design overall than if strict and rigid numeric rules were the sole basis for decision making. In practice this has produced an either or environment where mediocrity flourishes and good design is no longer encouraged. *I recommend that the relationship between each rule and its criteria be reinstated and that in assessing compliance there is an understanding that any numeric rule has been derived through a process that typically establishes a CODE MINIMUM. There is in fact a difference between the minimum and the desirable, and in order to grant approval there needs to be an explicit reference to the concept of merit. Unless the merit track actually recognises and delivers merit, we will continue to reward mediocrity and receive substandard development.*

What I would say in general terms is that the DA processes operating now in the ACT are urgently in need of root and branch review and reform. They deliver extremely poor outcomes, not only in terms of the Territory Plan's triple bottom line and the National Capital Plan's strategic directions, but they foster an environment in which design and construction standards and genuine merit are regularly disregarded in favour of ticking off boxes to ensure fast turnaround times and robust approval numbers.

What that ultimately means, in my view, is there has been inadequate oversight, irresponsible procedures, and a lack of public accountability on the part of the assessment units within the EPSD Directorate. Quality control appears to be lacking altogether. The adverse social, economic, and environmental impacts of many of the DAs we are getting are far greater than they should be. The proportion of new housing stock built in the ACT in the last decade for very large houses and very profitable multi-units with excessively large footprints is troubling because it shows there is a runaway market for products that neither address affordability nor prepare us in the long term for climate change. We are channelling vital resources into grossly inefficient stock that creates problems that were foreseeable and avoidable, such as future heat islands, higher fire and flood risks, destruction of open space and loss of community facilities and habitat, when all along we knew better.

As a planner, I believe that the community is crying out for reforms.

Kind regards

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