



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL  
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## Submission Cover Sheet

Engagement with Development Application Processes in the ACT

**Submission Number:** 010 - Red Hill Regenerators

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# **Inquiry into Engagement with Development Application Processes in the ACT**

## **Submission by Red Hill Regenerators**

Dear Standing Committee members

### **Summary**

The experience of Red Hill Regenerators, as a community group, of the Development Application process is that it is almost entirely developer driven, resulting in disengagement and distrust at the notification, consultation and the decision-making steps. As guardians of Red Hill's critically endangered woodlands and its natural values, the Red Hill Regenerators have experienced many development proposals. Such proposals are rarely a result of government planning processes, rather they tend to be largely devoid of strategic consideration and often appear to be no more than 'kite flying' exercises. It appears that the Government planners, either implicitly or explicitly, use the developer led 'consultation' process with the community as an alternative to undertaking rigorous and professional in-house evaluations. This leads to community groups being expected to engage with developers, research their reports and spend their free time preparing extensive responses to development proposals which, in the end, have little chance of influencing government decisions.

We ask that the Standing Committee recommendations lead to improvements in the way in which community groups and community attitudes are currently treated and assessed within the development process, and that development proposals are integrated into well-defined and formalised government planning processes.

We also ask that the Standing Committee recommendations result in the Government better and more directly understanding an area's values and community attitudes to a proposed development, which have not been filtered and 'spun' through the developer's highly biased evaluation and consultation processes.

### **Background on the Red Hill Regenerators**

The Red Hill Regenerators are a volunteer ParkCare group of over 120 local residents who for more than 32 years have spent many tens of thousands of hours restoring, promoting and protecting Red Hill's critically endangered woodland and wildlife. Every month, for over the thirty years, group activities of 3 – 4 hours have been held. Members also work individually at times that suit them, while at least twice a year Red Hill Regenerators will facilitate landcare or guided walk activities for other community groups such as scouts, cubs, boys brigade, schools, conservation and church groups.

Red Hill Regenerators has removed many hundreds of thousands of woody weeds and countless exotic grasses and herbs from the Red Hill woodland remnant, undertaken track rationalisation and erosion control, monitored rare and threatened plant and animal populations, mapped rabbit warrens, counted the kangaroo population, revegetated historic grazed spaces, assisted in the import of coarse woody debris and planted and then cared for thousands of endangered daisies and native trees and shrubs.

The Red Hill Regenerators has received support for its work from other community groups including the Hughes Residents Association, the Deakin residents Association, the Inner South Canberra Community Council, the Garran and Hughes Residents Action Group, the Canberra Ornithologists Group, the Friends of Grassland and the Conservation Council of the ACT.

## **Term of Reference 1. Community engagement and participation in the Development Application process**

### **As a deeply involved community group, why is it that Red Hill Regenerators are not notified about developments within or adjacent to Red Hill's woodland?**

Despite its long, active and transforming connection with Red Hill's woodland, the Red Hill Regenerators are not notified when a development application is lodged within or adjacent to Red Hill's remnant woodland. Nor is there a process to lodge an interest in particular blocks, so that notification could take place whenever an application within one of those blocks occurred. What is particularly frustrating is that the Agency that supports and encourages volunteer ParkCare groups is in the same Directorate as the part of government that handles the public notification of development applications. It is unrealistic to expect community groups to either trawl through the Planning website for new listings or locate a small sign in front of any of the several hundred blocks, that either border or are within the over 10km boundary of Red Hill's woodland. This lack of communication with community groups is indicative of, at best, a half-hearted attempt by the planning authority to actually want to involve the community in engagement.

A result of this lack of direct notification is often a late awareness concerning the existence of a development proposal, and hence a shorter period in which public comment and objections can be lodged. Volunteer groups such as the Red Hill Regenerators (fitting Red Hill Regenerators matters into busy lives) find that it is often time-consuming and problematic to produce a considered and comprehensive response in the period left available for comment.

The Regenerators' experience is common to other community groups with clear, long term and strong connections to pieces of land, over which development applications have been lodged. It is not beyond the abilities of the Directorate that groups could be notified directly about a development application on land for which they have strong connection.

### **Red Hill Regenerators engagement is usually channelled through and filtered by those wishing to undertake the development. This is an inappropriate, disrespectful approach.**

It has been unusual for the Red Hill Regenerators to be able to engage in a development process where there is an ability to shape the outcome. Where Red Hill Regenerators have been able to influence a development outcome, it has come outside of the immediate development process and within a political or legal sphere, which may not be desirable for any of the parties. The Red Hill Regenerators are never contacted by the Directorate either early or even late in the development process. Rather, input is directed through the developer, the party which nearly always seeks as little change to their development plans as possible. The developer will often engage consultants whose purpose is not to represent community values but to put the best spin on the development to the community. Often the

information provided by these consultants is inaccurate, misleading or missing vital elements. The Directorate apparently does not seem to scrutinise the information being provided prior to this developer-filtered consultation beginning. Nor are groups like the Red Hill Regenerators given easy access to the decision makers. Perhaps this would not matter if the information provided by these consultants to the Directorate was subject to sceptical scrutiny, and direct correspondence from the community group also considered. This does not seem currently to be the case.

It is telling that when Red Hill Regenerators have obtained assessment documents via Freedom of Information, a “cut and pasting” of the consultants summary in briefing and other key decision documents is observed. It seems that community comments have only received lip service, and that community engagement appears to be more about ticking a box rather than a genuine attempt to understand and take into account community views. It does not help that the same consultants tend to be the representatives from one development proposal to the next. It is hard not to feel cynical when a new round of engagement is being led by the same consultants with whom the group has a history of unsatisfactory and often evasive and untruthful dealings.

What is also noticeable is that the Directorate decision documents often omit a summary of past history and community views when a similar or related development was lodged. Also missing is a critique on the appropriateness or value of consultation undertaken by the developer parties. Why, when it comes to community engagement, does the Directorate appear to often accept the advice of developers who have a clear conflict of interest? Even relevant past Planning Directorate documents which canvassed community opinion, such as Neighbourhood Plans, seem only fleetingly referred to.

Community engagement should not be filtered through the developer. If conflict and community anger and frustration is to be reduced then direct community engagement with the Directorate should be more than just the ability to lodge an objection. The Directorate has environmental, heritage and tree protection specialists engaged in and contributing to the development process and assessment outcome. Why are not specialists in canvassing community engagement and assessing community views not also employed in the process?

It is also telling that Schedule 4 of the Planning and Development Act contains no triggers relating to level of community interest in a proposal as to whether a development should be considered under the merit or impact track. Surely it is a matter worthy of consideration.

**Engagement with the community should be strategic, rather than the current ad hoc project by project, developer driven approach.**

The situation regarding the Red Hill woodland remnant is complex as that part of the woodland that is within the nature reserve (about ¾ of the total woodland) is land designated under the National Capital Plan, so that two planning processes and laws apply to different parts. Nevertheless, almost every year for each of the thirty-two years of activity the Group has been required to comment on (and usually object to) at least two proposed infrastructure, residential or other building developments within or closely adjacent to the Red Hill woodland or that would have significant indirect impacts on the woodland. The Group would frankly prefer to be repairing the environment, than spend our time arguing against poorly considered development proposals in or around critically endangered woodland.

Some of the developments, such as fitting a new valve on a water utility pipe, may have a small footprint. Others, such as a recent proposal to establish embassies over 12 ha of Red Hill's woodland, can have a massive footprint. The common thread is that each of the 60 plus development proposals have been considered separately with no consideration of cumulative impacts or meaningful strategic land use policies and programs.

This lack of broader strategic planning considerations has been exacerbated by what seems to be the increasingly common practice for Territory Plan variations to be sought. Red Hill Regenerators have an expectation that the Territory Plan formally establishes the future use of land in and around Red Hill. Certainty is thrown out the door when it becomes the norm for variations to be sought to accommodate developer whim, while the community is left wondering where and when the next development proposal will be submitted, what is going to be the ultimate cumulative impact and will this impact significantly degrade the critically endangered woodland on Red Hill. For many of the local residents, not just members of Red Hill Regenerators, the proximity of the Hill and its wildlife are the reasons they chose to live in the neighbourhood and/or most value about their suburbs.

Red Hill Regenerators supports strategic planning that is actually meaningful to what happens on the ground over the long term, such as the thirty-year time-scale in which the group has been active. We abhor the developer-driven, development-by-development assessment process.

### **Some recent steps have been taken in the right (strategic) direction, but they need to be followed through**

The first step towards a more considered, engaged approach for the Red Hill woodland area was the recent Community Panel process, consisting of three panel meetings to consider proposed development on the Federal Golf Club concessional lease. Planning Minister Mick Gentlemen agreed to the panel meetings as a result of a combined community and conservation groups' interest. Three panel meetings involving members of the community, the planning authority and the developers were held. The presentation of information by parties was valuable as it enabled understanding and some agreement on the facts and values in contention. However, the three meetings were just a presentation of information rather than developing into a forum for working things out together. A community request to extend the number of panel meetings to discuss and try and resolve issues raised, was strenuously opposed by representatives of the planning authority at the final meeting. This may have been at the developer's request but it was an opportunity missed for each party to accommodate some of the concerns and issues of the other. Fundamental issues and concerns would have remained but some of the frustration would have been taken out of the debate and it would have been more focused. Following the refusal by the planning authority to countenance any further engagement, the community was forced to consider a political approach as a last resort.

Red Hill Regenerators consider that the panel process had merit, but it is important that all parties reach agreement and enter into a shared **terms of reference** of what the panel will address. These **terms of reference** should be agreed upon as the first part of the panel process. The planning authority also needs to **commit** up-front to implementing outcomes, or at least those outcomes that fall within the **remit or terms of reference** of the panel process.

Following the closure of the panel process, lobbying from the community groups with an interest in the Red Hill woodland area resulted in a Legislative Assembly resolution requiring the preparation of a Red Hill Integrated Plan. This is a positive development and Red Hill Regenerators has offered and had a level of early involvement with the planning authority in the production of the plan. It is hoped that it does become a long-lasting, strategic plan that prevents significant impact on Red Hill's woodland.

The group was disappointed with the approach by the Hindmarsh group (development proposal on S66 Deakin), which has openly stated that in order to circumvent an integrated approach they have sought through the development process a variation to their current lease, seeking a 41 times increase in the approved building footprint. It is an approach that exemplifies developer attitudes to both strategic planning and community engagement, and is indicative of how the development process serves the developer interests well, but short-changes the community and subverts good planning outcomes.

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

The quality of the information submitted within development applications impacting the Red Hill woodland has very often been woefully inadequate. The latest Hindmarsh proposal for Section 66 is typical of the majority of applications that have not acknowledged, let alone documented, the occurrence of critically endangered woodland. Neither has there been acknowledgment that the Red Hill woodland is one of the most significant remnants of its woodland type remaining in Australia.

In their documents, Hindmarsh state that the land consists of exotic vegetation, when it is predominantly covered with endangered woodland. Similarly, infrastructure developments will ignore the presence of this woodland. When the Red Hill Regenerators pointed out that the Federal Golf Club and NCA embassy proposals were located over high quality woodland, the Group was met with the question "Does it?" and were then required to develop documentation to prove it.

There are no sanctions to development applications or questionable consultant reports that contain inaccurate, incomplete, false and/or misleading information. At worst, they may be required to re-notify the DA, which merely re-starts the clock.

The burden and cost of proving the DA is defective is borne by volunteer community groups and individuals, such as the Red Hill Regenerators group. The Group has spent many hundreds of hours surveying proposed development sites, writing up reports and engaging within the assessment process. It is a sense of great frustration that this is the norm not the exception. It seems to this group that developers are particularly choosing to employ consultants as lobbyists, rather than to provide professional and expert accounts of an area's wildlife and vegetation values. Developers will be encouraged to take this approach when it is allowed and are seemingly encouraged by the nature of the development process. A system of government sanctions for false, incomplete or misleading reports and consultant accreditations (based on their expertise and quality of their work) are urgently required.

Red Hill Regenerators has amongst its membership a wide range of ecological, impact assessment and legal knowledge and skills. If community groups did not possess such skills, engagement in the development process would be much less effective and resources would need to be engaged to competently detail opposing views and information to that presented within development applications. The Group has in the past funded expert reports to counter incorrect or incomplete information in development assessment documents, but when shoddy documents become the norm, it places considerable pressure on the resources and time of the Group.

## **Recommendations**

- 1. Community groups such as the Red Hill Regenerators with a long-standing and strong connection to an area should be directly notified about proposed developments affecting this area.**
- 2. Community input in the development process should not be initiated, designed, organised by and filtered through the developer. Rather, there should be direct and meaningful engagement with and through the planning authority, after the planning authority has evaluated the quality of documents and plans produced by the developer.**
- 3. Integrated plans for an area, where exceptions to planned land uses are rarely accepted, and there is long-term certainty and history about what is permitted on a particular piece of land, should be pursued and produced in conjunction with the local community. This planning process should have clearly stated terms of reference and an upfront implementation commitment by the planning authority.**
- 4. Consultants producing environmental and community consultation reports should be accredited by the planning authority. Incorrect, inadequate, missing and misleading information within the development application should be discouraged by removing accreditation from those consultants producing such documents. Development Applications based on such information should be dismissed without further consideration and sanctions applied to the developer.**
- 5. Environmental and community consultation reports should be carried out at arm's length from the proponent. It makes sense to have the proponent pay for the work but the government agency should appoint the consultants and set the brief.**
- 6. A high level of community concern about a proposal should be a trigger for consideration under the impact track.**