



Ms Veronica Strkalj
Secretary
Standing Committee on
Planning, Public Works and
Territory and Municipal Services
committees@parliament.act.gov.au

DRAFT VARIATION TO THE TERRITORY PLAN NO 306 - RESIDENTIAL DEVELOPMENT, ESTATE DEVELOPMENT AND LEASING CODES

The Inner South Canberra Community Council (ISCCC) welcomes the opportunity provided by the Legislative Assembly to lodge a submission in relation to Draft Variation 306 to the Territory Plan.

The ISCCC has previously supported submissions to ACTPLA on DV306 from residents' associations in Canberra's Inner South. Similarly, on this occasion, the ISCCC supports the submission to the Standing Committee by the Griffith/Narrabundah Residents' Association (attached), which addresses comprehensively key issues and concerns with the revised DV306.

This ISCCC submission does not intend to traverse the same ground. Instead, we will consider the extent to which DV306 adheres to National Planning Systems Principles developed by the former Local Government and Planning Ministers Council¹. These Principles are intended to enhance the effectiveness of local government and planning in Australia and New Zealand.

There are ten National Planning Systems Principles:

1. **Integration** – rationalise structures, policies or processes to produce *coherent* outcomes;
2. **Coordination** – coordinate different but interdependent structures, policies, processes;
3. **Certainty** – provide certainty and consistency regarding development, rate and scale at which it will take place, and how planning principles and mechanisms will be applied;
4. **Responsiveness** – ensure responsiveness to changing or unforeseen circumstances;
5. **Equity** – protect personal rights, equitable access to review and appeal, procedures that do not discriminate against individuals and groups;
6. **Efficiency and Economy** – ensure that planning systems do not have unnecessary processes; government structures promote free flow of information; economical use of resources;
7. **Transparency and accessibility** – make planning systems open and legible to stakeholders; ensure planning system users can easily access and interact with the system;
8. **Accountability** – have clear lines of accountability for key planning decisions;
9. **Effectiveness and authority** – ensure planning instruments have a measurable impact;
10. **Engagement** – focus on community *engagement*, not more reactive *consultation*.

¹ <http://www.lgpmcouncil.gov.au/publications/files/National%20Planning%20Systems%20Principles.pdf>

If we review the history of DV306 in the context of these principles, we will see that it has not been a glowing example of best practice.

- i. From the point of view of **Integration (principle 1)** and **Coordination (principle 2)**, we see that consultation on this very significant variation to the Territory Plan that will affect the nature and scope of development across the ACT, *preceded* consultation with the community on the **ACT Planning Strategy** and the **Transport Strategy**. It should have been the other way around, with the community engaged on the broader strategy, before getting into the detail of how it would be implemented through instruments such as the Territory Plan.
- ii. With regard to **Certainty (principle 3)**, DV306 would not appear to meet the best practice requirement that key planning instruments are performance based, clearly articulated in plain English, and commit to planned outcomes. Quite a lot of the terms used such as “reasonable” are open to interpretation, and DV306’s 272 pages of planning jargon are intimidating to all but the most committed Canberra residents. A good example of uncertainty is provided by Rule 7 in the Single Dwelling Housing Development Code on solar access. Rule 7 is not mandatory, and instead there is a qualitative “criterion” that says a building should not “shadow the windows of habitable rooms (other than bedrooms) of any approved and constructed dwelling on an adjoining *residential block* at noon on the winter solstice”. What certainty can be provided that the intent of solar passive design will be realised?
- iii. While we recognize that the use of Criteria rather than complete reliance on mandatory rules provides opportunities for greater **Responsiveness (principle 4)**, there is still a need for consistent and measurable performance indicators so that ACT residents can be confident that the rules and criteria are being complied with.
- iv. One of the key requirements for **Equity (principle 5)** is equitable access to information for all individuals and stakeholder groups. The complexity of DV306, the size of the document, and use of technical jargon all make it next to impossible for the majority of Canberrans to be able to use it, let alone act on it. No doubt the consequence of this will be residents who, if they object to a local development and appeal in ACAT, will often face developers represented by legal counsel who are far more familiar with the planning legislation and rules.
- v. The whole approach to DV306 and its predecessors DV301 and DV303 has militated against **Efficiency and Economy (principle 6)**. Consider the way in which the highly significant DV301 and DV303 were issued in 2010. There was little publicity, little opportunity for residents to attend public consultation sessions where the new variations could be explained in plain English, and massive documents that they had to download if they did want to comment. Is it any wonder that there was a lot of community dissatisfaction leading to the establishment of a reference group and then the development of the successor DV306? There has been an incredible impost on the time and effort of people all along the chain. It would have been more efficient and economical, and more effective, if the approach had been to start with consultation on the draft ACT Planning Strategy and Transport Plan and then deal with implications for the Territory Plan.
- vi. As indicated already, DV306 is not written in plain English. It therefore also fails the test of **Transparency and Accessibility (principle 7)**, which requires, amongst other things, that “Key planning instruments are written in plain English and avoid using jargon.”

- vii. With respect to **Accountability (principle 8)**, DV306 does not engender confidence that current problems with lack of clarity leading to appeals to ACAT will be reduced in future. Inner South Canberra's residents' associations know from personal experience that the ACT Government does not ensure that all development applications meet its own rules. It is not clear to what extent there is auditing of independent certifiers' reports to ensure accountability. Perhaps there is not sufficient auditing, if the recent inquiry into the quality of residential buildings is anything to go by. Therefore, the **Effectiveness and Authority (Principle 9)** of the Territory Plan in achieving stated objectives is open to question.
- viii. Perhaps most important of all, the approach to DV306 and its predecessors DV301 and DV303, has focused on *consultation*, which suggests a reactive role for the community, rather than the best practice approach of community **Engagement (Principle 10)**. Community engagement should start as early as possible in the planning process rather than waiting until a highly unsatisfactory planning document is prepared and then tossing it out to the community for token consultation within short timeframes.

DV 306 is a major variation to the Territory Plan and will set the residential development parameters for several years to come. It is therefore of major concern that throughout the documentation, apart from the solar access segments, there do not appear to be any arguments to justify the changes being proposed and more particularly quantifying the benefits that will accrue to Canberrans. Furthermore, despite several submissions pleading for simpler documentation, the revised DV 306 is just as complex as the previous version. We believe that this objective is not difficult to achieve

In conclusion, DV306 and its predecessors represent a sorry tale of poor urban planning processes, and the ISCCC recommends a complete overhaul of these processes to ensure compliance with best practice planning principles. In the meantime, the principles contained in DV306 should be put on hold.

As previously indicated, the ISCCC welcomes the opportunity to answer questions in relation to its submission and looks forward to its scheduled appearance before the Committee on 11 July 2012.

Yours sincerely

(Signed)

Gary Kent
Acting Chair
Inner South Canberra Community Council

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