

# Griffith/Narrabundah Community Association Inc.

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GNCA letterhead

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Dear Mr Rake

## **DA 201629546 - 16 LANDBOROUGH ST GRIFFITH ACT – FURTHER ISSUES**

I refer to the Griffith Narrabundah Community Association's (GNCA's) previous letter of 15 January 2017 on this matter. Thank you for your email of 16 January acknowledging receipt and advising that you would get a reply back to me as soon as possible.

We now understand that the development in question is not an Exempt Development but was, approved on 19 August 2016. In the period since the GNCA's last letter further irregularities with regard to the DA have come to light.

The GNCA believes that DA 201629546 was granted on the basis of incorrect information, and is in breach of the mandatory 50% Plot Ratio. Consequently approval was invalidly granted, and the development at 16 Landsborough St is consequently being constructed without a valid DA approval. Under the circumstances all work should immediately cease, and the builder invited to submit a new DA that complies with the Code. Any non-compliant structure should of course be removed. We seek Environment, Planning and Sustainable Development Directorate's (EPSDD's) urgent advice on these propositions and of what action is to be taken. As time is of the essence we suggest that merely referring the matter to Access Canberra through normal bureaucratic channels would not be appropriate, and some kind of high level intervention may be required.

The basis of our view is as follows. The ground floor plan for the development (attached) has an Area Schedule in the top left corner which helpfully gives the area of various elements: Ground Floor (270m<sup>2</sup>); Upper Floor (104m<sup>2</sup>); Garage (74m<sup>2</sup>); Cabana (52m<sup>2</sup>); and Alfresco (34m<sup>2</sup>). As the plan does not give any dimensions we (and, we note, EPSDD) must take these numbers on trust, which also means that we can only estimate the area of the other covered area attached to the house, the Covered Entry, for which no area figure is given

(some measurements are available from the Setback plan, include the dimensions of the block, so distances and areas can be approximately estimated).

The Area Schedule adds the areas of the Ground floor, Upper Floor, Garage and Cabana to give a Gross Floor Area (GFA) of 500m<sup>2</sup> and a Plot Ratio of 49.95% (as the block area is 1,001m<sup>2</sup>). This assessment excludes the Alfresco and the Covered Entry (which has an area of at least 6m<sup>2</sup>) from the GFA, and this appears to be inconsistent with the Territory Plan. The GNCA recognises that determination of the GFA for Plot Ratio evaluation purposes is a complex matter (we have been encouraging EPSDD to consider amendment of the definition and policy objectives of the Plot Ratio for some years now). However a relevant consideration in this case is the definition of Building Line, which provides that

“**Building line** means a line drawn parallel to any *front boundary* along the front face of the *building* or through the point on a *building* closest to the *front boundary*. Where a terrace, landing, porch, *balcony* or verandah is more than 1.5 metres above the adjoining *finished ground level* or is covered by a roof, it shall be deemed to be part of the *building*.”

The GNCA is of the view that both the Alfresco and the Covered Entry could be appropriately described as “*terrace, landing, porch, balcony or verandah*” and notes that both these areas are roofed (see plan for the Upper Floor, also attached). Consequently these areas are part of the building and should be included in the GFA. Inclusion of these two areas in the GFA would increase the Plot Ratio to at least 53.95%, depending on what area is calculated for the Covered Entry, but well above the mandatory limit of 50%.

It might be contended that the architects had made a matching error in over counting the area of the garage. It is not clear from the DA application why the architect counts this area as 74m<sup>2</sup>. However Rule 1 of the Single Dwelling Housing Development Code provides that “For the purpose of calculating *plot ratio* for this rule, the *gross floor area* includes 18m<sup>2</sup> for each roofed car space”. Consequently if we adjust the Garage area to 32m<sup>2</sup> then the plot ratio becomes 50.15%, still above the mandatory 50%.

It appears that this is an example of where EPSDD has been too reliant on calculations provide by an architect (although if EPSDD believes that neither the Alfresco and the Covered Entrance should be countered as part of the building the GNCA would be grateful if this could be explained). This raises the question of the status of a DA that has been granted on the basis of incorrect information in relation to compliance with a mandatory rule. As advised above the GNCA believes that any such DA would cease to be a valid Development Approval once such an error was discovered, as s119 of the Planning and Development Act provides that

“(1) Development approval must not be given for a development proposal in the merit track unless the proposal is consistent with (a) the relevant code;...”

Furthermore the Note at the end of the section says “An application cannot be approved if it is inconsistent with the territory plan” These make it clear that the DA cannot be approved if it is inconsistent with one of the mandatory provisions of the relevant Code, in this case the Single Dwelling Housing Development Code. As the Plot Ratio Rule is a mandatory rule with no relevant Criterion there is no scope for any discretion in such a case. The contrary

proposition, that a DA could remain valid after it was discovered that advice provided in the DA application was not correct, would be counterintuitive and a significant incentive for applicants to make untrue statements in their applications.

A supplementary issue on which we would be grateful for your advice is what sanctions are applied to professionals such as architects who provide clearly incorrect advice in DA submissions (we note in this regard that the architect also asserts that there is no tree on the verge in front of the house, a statement which is manifestly incorrect, so these misstatements of the facts are not isolated).

In relation to the GNCA's formal complaint lodged with Access Canberra on 2 January 2017, we have heard nothing back to date beyond an acknowledgement of receipt. However, another complainant has been advised by Mathew Bond from Construction, Environment and Workplace Protection, that

“The garage wall was approved for a boundary wall height of around 3.4m (3400mm) high which there was a minor encroachment of the building envelope, as the site inspection identified the builder has increased the height of the wall breaching the DA approved plans. As the breach has happened the builder has been engaged to bring the building back to compliance which at this stage they are preparing to lodge a Amendment.

The builder is in the process of lodging a amendment to DA 201629546 for the changes in heights. Once the DA amendment is submitted it will be assessed by a DA assessing officer, notification may be sent out to neighbours and members of the public can have the opportunity to make a representation. Depending on the decision will determine the action the enforcement unit will take.

The builder has been made aware of the breach and understands that they will need to submit the relevant amendments or rectify the breach by potentially reducing the height.”

We understand that Mr Bond had inspected the building and advised the builder by at least 12 January that the Garage wall was noncompliant and remedial action needed to be taken. We further understand that no application to amend the DA Application had been received by 30 January. We would be grateful for your urgent advice if this information is incorrect or if an application has been received since 30 January. As advised in our earlier letter, the GNCA believes that it is essential that neighbours and other interested parties have the opportunity to make submissions on any proposed modification to the DA should EPSDD choose to take this route under s198 of the *Planning and Development Act 2007* to resolving the non-compliant wall height issue. However the GNCA notes that any action taken on this route might permit a post facto validation of the excessive wall height but would not assist resolving the Plot Ratio issue.

Despite the advice from Mr Bond that the building is not compliant with the DA, work appears to be continuing at the fastest possible rate. The possibility exists that the builder's

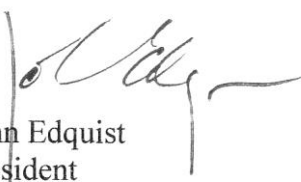
strategy is to complete the building before seeking any approval for amendment, in the expectation that even if the application for an amendment were rejected, the worst that would happen is that he would have to pay a fine. If this speculation were correct, and neither of EPSDD nor Access Canberra are willing or able to compel cessation of work, then it would appear that there is now no effective mechanism to enforce compliance with the Territory Plan. The GNCA would regard this situation as a very unfavourable outcome and looks forward to your advice that this is not the case.

Just for completeness sake we advise that although the Alfresco is shown as having the roof supported by five pillars constructed along the boundary line with 14 Landsborough St, a recent inspect reveals that these have been replaced with a solid brick wall and large window looking over the fence into the private open space of 14 Landsborough St. This would seem to breach both the Building Envelope rule (Rule 6 of the Single Dwelling Housing Development code) and the Rear Zone Side Setback rule (Table 5, Rule12 of Single Dwelling Housing Development Code). As it appears that this further “deviation” from the approved DA plans has occurred since Access Canberra inspected and advised the builder that the Garage wall was non-compliant, it appears that the builder has a somewhat relaxed attitude to compliance, and is unconcerned at the prospect of any sanctions which might be applied.

In summary, this development appears to be being constructed under an invalid DA because it breaches the mandatory Plot Ratio rule; the garage wall on the boundary with 18 Landsborough St has been ruled by Construction, Environment and Workplace Protection to be well in excess of the approved height, but work continues; the front structure intrudes into the front setback and was approved despite being justified by an manifestly untrue statement from the architect; and a solid wall rather than a series of pillars is being built on the boundary of 12 Landsborough St as part of the Alfresco breaching at least two Territory Plan rules. We will advise you of further infringements as they come to light.

We look forward to your urgent response to these issues.

Yours sincerely



John Edquist  
President

7 February 2017

Attachments:

Floorreg-201629546-Ground Level-01

Floorreg-201629546-Upper Level-01