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The Secretary
Standing Committee on
Planning, Public Works and
Territory and Municipal Services
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DRAFT VARIATION TO THE TERRITORY PLAN NO 306 - RESIDENTIAL DEVELOPMENT, ESTATE DEVELOPMENT AND LEASING CODES

The Griffith Narrabundah Community Association (GNCA) has a number of concerns in relation to Draft Variation 306 as circulated by the Environment and Sustainable Development Directorate (ESDD) in March 2012 after its consideration of comments made during the consultation process in 2011.

The GNCA lodged an extensive submission as part of that consultative process on 6 September 2011 raising a number of issues which we felt required further thought. While some of these have been dealt with, a number of issues remain. These will be discussed further below. In addition, we have a number of general comments about the planning regime and planning legislation in the ACT which we believe have wider application than just consideration of DV306.

GNCA is not opposed to change or urban intensification. But it is opposed to development which degrades Canberra and its special features. It is an unfortunate fact that much inappropriate development complies with the provisions of the existing Territory Plan. We feel that the review of planning legislation which is embodied in DV306 provided a welcome opportunity for a full review of the many real problems which beset the existing Residential Development Codes. ACTPLA/ESDD's review of the Development Codes could (and should) have been used to assess how well the Territory Plan is meeting its objectives, and where it could be improved. The Plan as it stands has numerous deficiencies:

- it is unwieldy and difficult to access by ordinary citizens;
- its provisions are complex and difficult to understand, even by professionals;
- its provisions are imprecise, overly qualitative, subjective and open to many interpretations; and
- it uses terms which are not defined within the Plan and which consequently have no legal effect when planning decisions are tested

However, as well as these 'textural' problems, the Territory Plan has underlying 'functional' problems, in that, as it currently written, it fails to give effect to the Plan's Statement of Strategic Directions. This Statement highlights the importance of:

- community wellbeing and environmental quality;
- the maintenance of residential amenity;
- the need to safeguard sites for particular community needs;
- the preservation of open spaces; and;
- the promotion of high quality/best practice development.

It includes the assertion that in the Plan “Particular care will be taken to ensure high-amenity, quality design outcomes within residential areas, heritage areas ...” The Statement says further “Retention of Canberra’s unique landscape setting, including the integration of natural and cultural elements that create its “garden city” and “bush capital” qualities, will be accorded the highest priority. Special attention is to 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.”

The GNCA believes that the Territory Plan in its current form has failed to achieve these objectives. As a consequence it is imperative that the Plan and its Development Codes be revised to ensure that:

- heritage areas and their surrounds have adequate protection;
- The garden city character of the older suburbs (which gives Canberra much of its distinctive character), be preserved;
- the provision of adequate space for trees and other vegetation is actively encouraged as part of residential development and redevelopment, to maintain city character, and for environmental and residential amenity reasons;
- Greater regard is given to differences in the needs and character of different part of Canberra and this is reflected in the incorporation in the Plan of appropriate neighbourhood plans and/or precinct codes; and
- areas set aside for recreational and open space purposes be protected and enhanced for use by future generations.

Unfortunately the changes proposed in DV306 do not significantly address these shortcomings.

To address these issues we make the following recommendations.

1. The Need for a Full Review

GNCA recommends that further changes to the Territory Plan be put on hold and that a full review of the Territory Plan be undertaken designed to

- Inform and engage the community on changes being proposed
- Simplify the Territory Plan and make it clearer and more accessible to users, including by greater use of quantitative requirements
- Provide adequate protection of heritage areas
- Preserve the distinctive garden city character of the older suburbs in inner Canberra

- Recognise the different needs and characteristics of different parts of Canberra and the value of neighbourhood or precinct plans developed in consultation with local communities
- Ensure that all residential development allows adequate space for trees and other vegetation including through revised plot ratio requirements
- Areas zoned for community, recreational and open space purposes are preserved for use by future generations

2. Improve the Consultation Process

The GNCA welcomes the opportunity that has been provided to make submissions to the ACTPLA about DV2306 and now to make submissions to the Assembly Standing Committee on Planning, Public Works and Territory and Municipal Services. However, we note that the changes proposed in DV306 are both extensive and complex, and hard for the layperson to follow. We note that the papers issued by ACTPLA in relation to the Draft Variation total 417 pages. Few have the time to master this amount of material. Community involvement with, and understanding of the Plan would be greater if proposed modifications could be introduced in smaller slices and better publicized.

GNCA considers that given the importance, extent and complexity of changes such as those currently being proposed, much more should be done by the Government to publicise and explain the content of Draft Variations and allow for informed discussion and comment by the Canberra community.

Recommendation 2

GNCA recommends that future proposals for significant changes to the Territory Plan be given much greater publicity and that as part of this the Government arrange a series of community meetings to explain what the main changes being proposed are, why these are necessary and how these will make Canberra a better city.

3. Make the Territory Plan Easier to Use

Restructure the Residential Zones Development Code

The Plan should be rewritten so that there is a chapter for each type of zoning. Thus there would be five chapters dealing with residential housing, with the chapter on RZ1 containing the objectives and development tables, and all elements from the Residential Zones – Single Dwelling Housing Development Code and the Residential Zones – Multi Unit Housing Development Codes, and the various General Codes that are applicable to RZ1 Housing. Similarly the chapters on RZ2, RZ3 etc would contain all material relevant to RZ2 or RZ3 housing respectively. While it might be argued that there would be repetition between the chapters this would make it much easier for the layperson to identify all the rules and criteria that applied to the relevant zone.

Make the Plan more precise and prescriptive

It is a common observation that the Territory Plan relies too much on criteria, which are qualitatively expressed. These are interpreted individually in different ways by different ACTPLA officers leading to uncertainty as to what is permitted and what is acceptable. This looseness in the rules is usually defended as allowing desirable innovation to take place. The GNCA notes that there appears to be little actual innovation generated by this arrangement and that some reconsideration would be desirable. From an administrative viewpoint, it is desirable that similar cases receive similar treatment. Thus the same application, viewed by different officers having no contact with each other should obtain the same outcome. The integrity of any bureaucratic system where such identity of results is not guaranteed may be subject to doubt. Given that there is, unfortunately, ample evidence of corruption in the planning process in other jurisdictions, this is an issue which the ACT Assembly should take very seriously.

Simplify the Language

Much of the wording of the Territory Plan including the various Development Codes is unclear. Reference to just about any ACAT planning decision will provide ample evidence for this statement. An effort should be made to simplify and clarify the language and make the format more accessible for users.

Define all terms used in the Plan

Many terms used in the plan are not defined. While planners may believe that such definition is not necessary as everyone involved in planning will know what is intended, this approach does not work when ACTPLA decisions are subject to ACAT review. For example, the Plan does not define “density” (as in low density, medium density, high density, housing). These densities are defined in the Canberra Spatial Plan, and the definitions here seem to reflect an Australia wide consensus, but the Canberra Spatial Plan is not part of the Territory Plan. Similar difficulties apply to “affordable” and “sustainable”. Although it might seem burdensome, such a step is essential if the plan is to have any real meaning.

Introduce More Quantitative controls

Far too many of the criteria are expressed in vague, subjective, qualitative terms, for instance “reasonable”. In response to criticism of the use of this term, ACTPLA has stated that ““reasonable” is an entrenched legal term which is typically interpreted as being what is reasonable to a reasonable person.” This is so, but what the “man on the Clapham omnibus” would find reasonable in relation to a point on ACT planning law is not at all clear. To minimize difficulties and confusion in interpreting the Plan, all rules and criteria should, to the maximum extent possible, use quantitative measures. We acknowledge that this might, hypothetically, lead to a decrease in “innovation”, but the gain to certainty in interpreting the plan would far outweigh any such hypothetical losses.

Specific Matters Relating to DV 306

1. Restore Neighbourhood Plan or actively move to develop Precinct Codes –

All references to Neighbourhood Plans have been removed from the Territory Plan by DV306. The GNCA believes that Neighbourhood Plans and the need to demonstrate a response to the Key Strategies they contain should be retained as the primary source of descriptions of “desired character” for particular neighbourhoods.

ESDD has now suggested (see p79 of the “Report on Consultation Draft Variation to the Territory Plan 306”) a revised definition of “desired character”, viz “desired character means form of development in terms of siting, building bulk and scale, and the nature of the resulting streetscape that is consistent with the relevant zone objectives, and any statement of desired character in a relevant precinct code.” This is an improvement, but it is important that existing Neighbourhood Plans be retained until appropriate Precinct Codes have been developed and are in place.

ESDD opposes retention of Neighbourhood Plans on the grounds that “Neighbourhood Plans often contain provisions that are not well suited to the assessment process”. However, ESDD fails to give any example, and undermines this assertion with the concession that “Some plans, however, contain statements of desired character that could form the basis for similar statements in precinct codes.”

The GNCA notes that Neighbourhood Plans were the result of extensive consultation with local communities and identified the objectives, principles and land use policies that were specific to local areas; they identify the qualities and characteristics that particular communities value about their neighbourhoods including facilities, streetscape, housing character, etc. The intention was to protect and enhance the features that are highly valued. Neighbourhood Plans can be very valuable in defining existing and desired character amongst other things and also in providing guidance on site specific matters.

The GNCA notes that since November 2011 the ESDD has introduced Precinct Codes for xx suburbs. We also note that the Precinct Code for Griffith, introduced on 18 May 2012, is largely a boilerplate product, comprising little more than a map of Griffith marked with Block 15 Section 42 and Block 34 Section 78, together with certain specific rules in relation to any development on Block 15 Section 42 reflecting the recommendations of this Committee in relation to a previous inquiry. The Precinct Code for Narrabundah, introduced on 4 November 2011, consists solely of a map, marked with Block 7 Section 29, Block 1 Section 87, Block 24 Section 94 and Block 6 Section 124.

The GNCA acknowledges that the development of Precinct Codes, along the lines of the Inner North Precinct Code developed after community consultation but before the introduction of DV306, could be an effective approach for identifying particular requirements for designated local areas. But this would only be the case if they were, like the Inner North Precinct Plan, developed in consultation with the local community, as was the case with Neighbourhood Plans, and contain worthwhile detail about the suburb

they pertain to. (The GNCA notes that the current Inner North Precinct Code was introduced on 13 April 2012, and we have not yet had the opportunity to examine it and determine if it contains all the provisions of the previous Inner North Precinct Code.) The GNCA submits that the current Precinct Codes as introduced from November 2011, apparently developed and introduced by administrative fiat within ESDD, do not achieve anything like the minimum standard required. They make a mockery of the planning system and merely serve to strip away any of the protections that may have been offered by a pre-existing Neighbourhood Plan. The GNCA could only accept Precinct Codes as the preferred instrument for identification of particular local requirements if they actually contained local detail and reflected local input. If this is not the case then the introduction of Precinct Codes is just an arbitrary removal of residents' rights previously extant under the planning system.

The GNCA recommends that DV306 provisions in relation to Precinct Plans be reworded so that currently existing Neighbourhood Plan remain in force until a suitable replacement Precinct Code has been developed through community consultation.

2. Revise and review Zone Objectives.

The GNCA's submission to ACTPLA in September 2011 noted that "The revised Zone Objectives represent some improvement on the current Zone Objectives but are still seriously deficient in some important respects". However, our points in relation to **Zone Objectives** do not seem to have been addressed and the objectives seem to have been left unchanged.

Our comments were as follows:

Desired Character

The definition of „*desired character*“ (“*Desired character means the form of development in terms of siting, building bulk and scale, and the nature of the resulting streetscape that is consistent with the relevant zone objectives*”) is not clear since it does not specify which of the Zone objectives are considered to be relevant. If the intention is that desired character means consistency with **all** of the zone objectives for the zone concerned that should be stipulated.

In GNCA's view, however, such a definition still falls well short of what is needed. Neighbourhood Plans should be regarded as the primary source of descriptions of “desired character” for particular neighbourhoods.

Negative impact

The phrase “does not have unreasonable negative impact” in 1d, 2e, 3d, 4d, and 5d must be changed. It is far too vague and convoluted. We suggest it should be replaced by something like: “does not have an adverse impact”.

Neighbourhood Plans

Where Neighbourhood Plans are available, these should be referred to in the Objectives.

RZ1 Objectives

Objective (d) should be reworded along the following lines:

(d) Ensure development respects valued features of the neighborhood and landscape character of the area, as described in the Neighbourhood Plan for the area (where one exists), and does not have adverse impacts on the neighbouring properties or on the streetscape of the neighbourhood.

RZ2 Objectives

GNCA has several concerns with the existing wording. We are concerned about the removal of the need to address the street because of the impact on the streetscape in the original garden suburbs. A "positive" contribution is too vague and capable of many interpretations as is "unreasonably negative". Also, as noted above, continued reference to the Neighbourhood Plans is also important.

Hence we suggest that objective (e) should be reworded as follows:

(e) Ensure redevelopment is carefully managed so that it achieves a high standard of residential amenity, addresses the street, respects the valued features of the neighborhood and landscape character of the area, as described in the Neighbourhood Plan (where one exists) and does not have adverse impacts on neighbouring properties or streetscape of the neighbourhood..

RZ3 Objectives

Objective (d) should be reworded along the same lines as RZ1(d) and RZ2 (e) above.

Objective (a) should be reworded as follows

(a) Provide for the establishment and maintenance of residential areas where the housing is low rise (maximum two stories) and predominantly medium density in character in locations that create a transition area between low and high density dwellings, particularly in areas that have good access to facilities and services and/or frequent public transport services.

RZ4 Objectives

Reword (d) along same lines of RZ 1, 2 & 3 above.

3. Abandon the policy of increasing the building bulk

The GNCA's submission to ACTPLA in September 2011 noted that

"Policies have been introduced throughout the document to allow additional building bulk through increased building envelopes, particularly adjacent to boundaries other than the northern boundary of an adjoining residential block. ...The policy of encouraging extra bulk has not been justified. We should not be encouraging maximum building bulk. We should be encouraging policies that improve life styles and better buildings".

Our points in relation to **Building Bulk** do not seem to have been addressed. We do not believe that this change should be introduced until ACTPLA/ESDD provides some explanation as to why this is in the public interest.

4. Revise plot ratio requirements to ensure that blocks are not over-developed

The GNCA raised its concerns in relation to this issue in our submission last September, arguing that the existing plot ratio requirements are inadequate; that they be reviewed and that a sliding scale approach be adopted. The determination of Plot ratio should also include detached garages and paving and other hard surfaces. There needs to be appropriate controls for preventing over-development of blocks and ensuring that Canberra's future as a garden city is not jeopardised.

The GNCA supports the retention of the current maximum plot ratio of 32.5% for dual occupancies on RZ1 single dwelling blocks, which decreases as the block size exceeds 800m², the minimum permitted area of a dual occupancy block in RZ1. We note that Tables 3 and 4 in the ESDD document *Draft Variation to the Territory Plan 306* appear to be in error in citing a figure of 35%.

The GNCA notes that the maximum plot ratio for single dwellings in RZ1 remains 50%. Our preference would be for a sliding scale, with the ratio being lowered as the size of the block increases, as (for example) under the current provisions a 1000m² house could be built on a 2000m² block. ESDD states that "A sliding plot ratio control for single dwelling blocks has not been introduced because the ramifications of such a significant change have not been assessed. However, it may be considered in the future." The GNCA believes that the introduction of DV306 is the appropriate time for ESDD to assess the ramification of the introduction of a sliding scale, and urges that this be undertaken as a priority.

The GNCA notes ESDD's argument justifying the removal of the 35% plot ratio for triple occupancies in the RZ2 zone, and wonders why a similar logic does not apply to dual occupancies in the RZ2 zone. As ESDD points out, existing rules privilege multi unit developments over developments with two or three dwellings. The GNCA notes that no justification is provided for why developers of 4 or more dwellings (to be changed to 3 or more dwellings under DV306) should have more accommodating provisions than other developers. As it stands, the 35% plot ratio for dual developments has simply deterred the redevelopment of many RZ2 blocks and distorted such development that has taken place into large multi unit agglomerations. At the least, some clear explanation of the policy objectives behind this approach would be desirable.

5 The proposed 65% plot ratio for multi-unit housing on large blocks in RZ1 areas is unacceptable.

The GNCA notes that the proposed rules would appear to permit a plot ratio of 65% for multi unit housing on large blocks in the RZ1 zone. This appears incongruous compared

with the maximum 505 permitted in RZ2. Some alternative zoning rather than RZ1 (or RZ2) would seem appropriate for any such proposed development.

6. Do not Reduce Current Setback Requirements, nor Setbacks for Residential Development in Commercial Zones

In our September submission the GNCA argued that:

(in DV306) “Many setbacks have been reduced, including upper level front boundary setbacks for blocks approved before 18 October; some side and rear boundary setbacks, including upper floor setbacks from side and rear boundaries; a reduced setback for unscreened elements; a nil setback for garages to one side boundary for large blocks; and a nil upper floor level side boundary setback on mid-sized blocks where the proposed building is part of an integrated housing development.

No sound justification has been put forward for the reduced setbacks which threaten to have a serious impact on neighbouring residential amenity. The reduction in upper floor setbacks will increase the potential for overlooking; it will also mean significantly reduced opportunity for tree growth.

The existing provisions should remain. Indeed, there is a case for increasing setback requirements since those requirements generally have a strong influence on the type of trees that can be grown and the gardens that are developed.”

The GNCA went on to argue, in relation to residential developments located in commercial zones that:

“DV 306 proposes that the setbacks which would ordinarily apply to residential zones, will not apply. Instead the nil setbacks of commercial zones will be used. As a result, the impact of noise from traffic, heating/cooling systems and other commercial activity will be greater than if the residential code for setbacks was applied.

We draw attention to the view expressed by the EPA (See Explanatory Statement pp 32-33) that applying commercial building setbacks to residential buildings would increase the likelihood for impacts to residential amenity due to closer proximity to odour sources, noise from ventilation, air conditioning unit noise sources and commercial activities.”

ESDD appears not to have responded to these arguments. GNCA recommends that the setback requirements in place before the introduction of DV306 be retained, and, in addition, that residential building setback requirements apply to residential buildings even when these are built in commercial zones.

6. The minimum block size for dual-occupancy in RZ2 should be retained at 800m². And for each additional dwelling another 400m² for each dwelling should be required.

The GNCA agrees with those who have put the strong view that many recent developments in RZ2 areas have not been in keeping with the character of Canberra and have had very adverse impacts on neighbouring residential amenity. Accordingly, we support the provisions in the draft MUHDC restricting the number of dwellings in any building to four; requiring separation of at least 4m between buildings containing two or more dwellings on the same block and limiting the consolidation of blocks for residential redevelopment in RZ2 to blocks that, following consolidation, have a continuous street frontage. These go some way to helping to avoid some of the worst excesses that have occurred.

However, the GNCA is strongly opposed to the proposal that the minimum block size for dual occupancy be reduced to 700m². We are also opposed to the proposal that only an extra 250m² be required for each additional dwelling once blocks exceed 2,350m². Retaining the existing controls would help ensure that developments blend with the neighbourhood while still encouraging significantly increased density in areas close to local centres.

7. Solar access

The GNCA welcomes the decision by ESDD to “reinstate into the SDHDC and the MUHDC requirement for all dwellings other than apartments to receive a minimum of 3 hours sunlight between the hours of 9am and 3pm on the winter solstice. For apartments, the reinstated provisions require 70% of dwellings to comply.”

Our preference would be that a higher proportion than 70% of apartments were also mandated to receive this minimum insolation. We recognize that in an apartment block it may not be possible for all apartments to have the desirable amount of insolation, but due south is one of four cardinal directions suggesting that at 75% of apartments should be able to receive the appropriate minimum, particularly if some thought is put into the layout and design of the apartments.

8. Other Forms of Residential Development including Residential Care Accommodation

The GNCA had raised concerns about “Other Forms of Residential Development” covered in the new Residential Zones Development Code. It appears to the GNCA that a number of changes have been made to these provisions as they relate to supportive housing and residential care accommodation during the translation from Part D of the Multi Unit Housing Development Code, without these changes being identified in the explanatory material provided by ESDD.

The GNCA feels that the new controls relating to supportive housing and residential care accommodation have less regard for the impact on neighbouring residential amenity. The ESDD has sought to allay such concerns with its statement that "Unlike commercial or community facilities zones, aggregation of community facilities in residential zones is not encouraged." However, if this were the case there would seem to be little harm in leaving the existing controls in place.

A further concern turns on the issue that ACTPLA and the ACAT have now both reached a view that many types of residential accommodation do not contain dwellings, and are therefore outside the reach of any residential development code. Such facilities are apparently uncontrolled by the Territory Plan. Clearly this is completely unacceptable, as it subverts the whole rationale for a planning regime, and should be immediately remedied.

The GNCA would be happy to provide further information on any of the se issues.

Yours faithfully

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