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Mr Hamish Finlay
Committee Secretary
Standing Committee on Planning,
Environment and Territory and Municipal Services
Legislative Assembly for the ACT
committees@parliament.act.gov.au

Dear Mr Finlay

SUBMISSION IN RELATION TO THE INQUIRY INTO DRAFT VARIATION 343

The Inner South Canberra Community Council (ISCCC) is grateful for the opportunity to provide a submission to this inquiry.

The ISCCC is an umbrella group representing the seven residents' groups in Inner South Canberra. As you will be aware, we made a submission to Environment and Planning Directorate (EPD) in relation to Draft Variation 343 (DV 343) when it was first published.

The ISCCC believes that the Standing Committee on Planning, Environment and Territory and Municipal Services (the Committee) should recommend:

- 1. That DV 343 should be rejected.**

The ISCCC further suggests the Committee recommend that the Scheme be modified to:

- 2. Permit owners who wish to retain their land (or to reacquire their surrendered block at the price they received for it);**
- 3. Refocus the scheme so only those houses with significant residual asbestos be demolished; and**
- 4. Ensure that relevant data on the magnitude of asbestos contamination and the type of asbestos found in each house is recorded and made publicly available.**

Other Concerns

One of our constituent groups, the Griffith Narrabundah Community Association (GNCA), also made a submission in relation to DV343, and has also provided a submission to this inquiry. The ISCCC supports the GNCA submission, which identifies a number of the major difficulties with the Draft Variation which we will not rehearse again here.

In addition, we note that the Territory Plan is extraordinary complex, structured with provisions impacting on proposed developments in RZ1 and RZ2, not only in the Single Dwelling Housing Development Code and the Multi Unit Housing Development Code, but also in the Residential Zones Development Code, the well over one hundred Suburban and District Precinct Codes and Maps, and the thirteen various General Codes. This means that we have no certainty that all provisions that apply to multi-unit housing in the RZ2 zone will apply to multi-unit housing which should be zoned RZ2, but which EPD persists in insisting is RZ1. Even if we were assured by EPD that this was not the case, a reasonable person could be forgiven for preserving a skerrick of scepticism, as the complexity is such that it is not beyond the possibility that even an expert might overlook something. And this Variation itself, if it takes effect, will only compound this complexity. As the Assembly should be encouraging EPD to simplify the Territory Plan, this seems yet another reason to counsel the Committee to recommend rejection of the amendment.

We note that the Draft Variation proposed to change the meaning of “Surrendered Residential Block” (ie a block to which the Scheme applies) in the Definitions in the Territory Plan so that it excludes “a surrendered residential block that is part of a registered heritage place or a provisionally registered heritage place under the *Heritage Act 2004*.” This change was introduced after justifiable concerns were raised by the Heritage Council and we welcome and support the proposed amendment. We would seek further consultation by EPD with the ISCCC and other interested parties if consideration were subsequently given by EPD to reversing this change.

Discussion

The ACT Government is to be applauded for the compassion that it has shown in addressing the Mr Fluffy problem. While we have questioned the efficacy of the Government’s policy in relation to Mr Fluffy houses, we do not question its sincerity. The Mr Fluffy legacy is a major problem, and the decision to spend large amounts of money to resolve the issue was an act of courage and commitment by the Government. But successful policy requires wide consideration of the likely short and long term impacts of the proposed response. But compassion on its own is not enough. Policy solutions should be efficient effective, and equitable.

The Government’s Loose Fill Asbestos Insulation Eradication Scheme (the Scheme) does not appear to meet this test. With an approximate total cost of one billion dollars, the Scheme will cost every voter in Canberra about \$4,000 or, if the Government’s estimate of \$400 million as the net cost is correct, a mere \$1,600 per head. It beggars belief that avoidance of one to three deaths, and a program to educate the public about the real risks posed by remnant asbestos in houses, could not be achieved for this sort of money. So the Scheme is not efficient, unless there are other unspoken objectives that the Government has in mind.

In that all identified Mr Fluffy houses are to be demolished, the Scheme is no doubt effective. However, there remains the possibility that there are commercial and industrial sites that still have Mr Fluffy insulation, plus the possibility that there are some Mr Fluffy houses not yet detected. However the Scheme achieves wider coverage than necessary, as it appears that neither solid brick houses, nor monocrete houses, can possibly suffer the same issue of asbestos within internal walls that the Scheme appears to be addressing.

Many houses in the inner areas of Canberra, including a significant proportion of Woden, have monocrete and perhaps to a lesser extent solid brick houses. It is impossible to say without further analysis what proportion of Mr Fluffy houses fall into these classes but it seems that there would be a real capacity to easily and effectively clear these houses of asbestos and therefore obviate the need for demolition, significantly reducing the cost of the Scheme. So the Scheme will be under-effective in some respects, and over-effective in others.

The Scheme clearly fails on equity grounds. Not only does it grant privileges to the Government as a property owner that are denied all other owners, but many Mr Fluffy house owners feel that they are being unfairly evicted from their properties and denied a reasonable chance to reacquire their block.

Previous Correspondence with the Government on the Mr Fluffy Issue

The ISCCC has believed that from the time the Asbestos Response Taskforce (ART) report was accepted by the ACT Government, the approach had shortcomings. Consequently the ISCCC wrote to the Minister for Planning Mr Gentleman on this issue on 16 December 2014, advising him that:

“to change the rules governing dual occupancy, even for unusual circumstances, would be a seriously retrograde step that would not add to the quality of the long term development of our city. Any subdivision or unit titling in RZ1 for areas less than 800 m² would have the effect of creating:

- 1. unplanned random re-zoning throughout a suburb, where small clusters of RZ2 would be created within an RZ1 zone. Random re-zoning is not a characteristic we should encourage in any environment and in an established garden-city area; it would more than likely adversely impact on the streetscape and character of the suburb.*
- 2. a thin edge to a wedge for developers to take advantage of in the future. The question will be: if 700-800 m² is good enough to sub-divide a Mr Fluffy block, then why not elsewhere? All the work done on this issue for Variation 306 and in relation to earlier amendments to the Territory Plan making provision for RZ2 zones would be undone and the overall result would be chaotic.*
- 3. an inequitable situation, whereby the government is allowed to sub-divide the block, but the private householder is not. In other words big brother government is riding rough-shod over the private individual to achieve a short term financial goal. Not good governance.*

The Government should recall that the rules embodied in the Territory Plan generally reflect sound social policy. We consider that any short term financial benefit to be derived from subdivision of RZ1 blocks ranging in size from 700-800 m² is outweighed by long term undesirable consequences and we urge the government not to proceed down this path.”

The ISCCC's submission to EPD in relation to DV 343 advised that the ISCCC believed that:

1. there are major flaws in the draft variation as it now stands, and urges that it be withdrawn to allow it to be significantly revised and rewritten in consultation with the public;
2. affected houses should not be demolished unless tests undertaken before demolition indicate that the presence of loose asbestos is of such a magnitude as to pose a significant risk to the inhabitants. The risk bar should be set at some realistic level, such as being greater than the chance of acquiring lung cancer from a one packet a day smoking habit;
3. the proposal to allow subdivision of dual occupancy blocks in the RZ1 zone threatens the integrity of the Territory Plan and that the financial gains to the Government from following this path do not justify the costs; and
4. the scheme should be modified to allow those residents who wish it to age in place. Because of the decades long latency period for mesothelioma the overwhelming majority of those who contract the disease over the next ten years will have acquired it from their exposure from some decades ago. The risk of people aged 60+ dying of an asbestos related disease acquired from exposure in the next few years is very slight.

Comments and Suggestions

We stand by these previous comments, but would wish to make the following points.

It is now evident that there is little community support for the DV. The DV gives effect to the Government's proposal to change the planning legislation to allow any block purchased by the Government under the Loose Fill Asbestos Insulation Eradication Scheme (the Scheme) that has an area of 700 m² or more and lies within the RZ1 planning zone to be subdivided by any subsequent owner into two properties which can be sold on separate titles. It appears that the intention is to increase the value of the blocks so that the Government will receive more for the potentially subdividable blocks when selling these after remediation.

By EPD's own count, only 12 of the submissions supported the proposal, and these were mainly from the building/housing industry. As there were 124 submissions one may assume that the remaining 112 were unenthusiastic about the proposal in one way or another. Alternatively, our colleagues in the GNCA have made the effort to read and assess all the submissions on the DV lodged with EPD, and they report that "*only eight of the 124 responses supported DV 343, and, of those eight, most expressed some degree of reservation*" an even stronger indication that the Draft Proposal has not been met with universal acclamation. On the contrary, it seems difficult to deny that it faces almost unanimous disapproval. This can probably be taken as an indication that the entire DV is deeply flawed. As a consequence the Committee would be wise to recommend against proceeding with the Variation.

When faced with an overwhelming lack of public support such as this, the most reasonable course would be to reconsider the proposal. The Committee could, if it so chose, provide suggestions to the Government as to how it might best proceed.

If the Government were to modify the Scheme to reduce public discontent there are several alternatives available:

1. Abandon the intention to rezone appropriate surrendered blocks in the RZ1 zone to permit their subsequent subdivision after sale by the Government, but continue with the buyback and demolition elements of the Scheme.

This would be the consequence of the Committee recommending against adoption of the Draft Variation, and the ISCCC suggests that the Committee adopt this course.

A decision to abandon the proposed rezoning of suitable blocks might well lower the total monies recovered by the Government on resale of the properties. This appears to be the principal barrier stopping the Government adopting this course. The Government would have to absorb the difference in cost between a block with a (Mr Fluffy) house on it and a block without a house, together with the costs of demolishing a house under meticulously controlled conditions to avoid the needless spread of any potential asbestos material.

While we are not aware of any estimates for the cost of demolition and remediation of a house in Canberra, the NSW Taskforce Report: Loose-Fill Asbestos Insulation in NSW Homes suggests a cost of \$180,000 per house (p34), suggesting that the cost of demolishing a thousand houses and remediating their blocks would be in the order of \$180m, somewhat cheaper than the Government's estimated net cost of the Scheme of about \$400m.

Certainly the Government appears to believe that a subdividable block would be worth considerably more than a conventional single dwelling block. However, with the 35% plot ratio limit the desirability of smaller undivided blocks not much bigger than 700m² is doubtful as any permitted housing on such block once subdivided would be very small. And it may be that the value of a Mr Fluffy house is not much more than no house. In this case Government losses would be restricted to the cost of demolition.

2. Offer to return to their original owners the blocks on which remediated houses had stood, deducting only the demolition costs and recovering these over a lengthy period.

The effect of this would be that the Government was acting as a remediation service to those who wished to continue to live on the site of their former Mr Fluffy house. To reduce the financial impact on such people, who would also have to fund the building of a new house, the Government could recover the cost of the demolition over several years through some kind of arrangement similar to the HECS scheme used to fund tertiary education.

Repayments would be set at a percentage of income, and the interest rate charged could be that faced by the Government. The Government could be sure that it would eventually recover its funds because the agreement would allow it to recover any outstanding debt from the sales price of the block when it changed hands. The budgetary cost of this would only be the cost of administration, although it might be that the Government still had Mr Fluffy remediation debts for two or three decades after the remediation was effected.

Before proceeding further it might be worth looking at how other jurisdictions have addressed this problem. The NSW Taskforce Report: Loose-Fill Asbestos Insulation in NSW Homes considers four possible options to deal with Mr Fluffy houses in NSW. These comprise an option where the NSW Government would purchase the house and land, demolish, remediate soil and resell the land; an option where the NSW Government would purchase the house only, followed by demolition and remediation of soil as above with the owner retaining the land; and two options involving the NSW Government demolishing and remediating with the owner retaining the land, with two differing levels of ex gratia payments to the owners.

The Taskforce recommended that the NSW Government give Mr Fluffy owners a choice of either of the first two options, and on 29 June 2015 the NSW Government adopted this approach. The Task Force estimated the cost of Option 1 (Purchase of House and Land), if applied to 511 Mr Fluffy houses, would total about \$279m (or about \$0.546m per house) and the cost of Option 2 (Purchase of House only) at about \$277m (or about \$0.542m per house). These contrast with the very rough estimates for the ACT Scheme of a net cost of about \$400m for about 1,000 houses, or very roughly about \$0.4m per house, about 1.44 times as expensive. The really interesting feature of the NSW estimates is that the cost of acquiring and demolishing the house only, leaving the owner with title to the land option at much the same cost but slightly less than the acquisition of both house and land option. This suggests that the costs to the ACT Government, were it prepared to sell surrendered blocks back to their original owners at acquisition cost after demolition and remediation of contaminated houses, might not be significantly more expensive than selling blocks at current market price.

If the proposal to subdivide Mr Fluffy blocks has been abandoned, either because DV343 has not been adopted or because the Government has changed its mind, there seems little purpose in continuing with acquisition of blocks where the owners would prefer to retain ownership. The ISCCC suggests that the Committee recommend that the Government adopt this option to make the Scheme more flexible and to meet the needs of those who wish to retain their land.

3. Limit the demolition of houses to those with significant remaining asbestos contamination, rather than the wholesale demolition of any house that was ever treated with Mr Fluffy insulation.

The demolition of every house ever insulated with loose asbestos not only removes from the community any risk that current residents might acquire some asbestos related disease over the potential future years of occupancy, but also reduces the irrational fear of some sort of taint lingering over Mr Fluffy dwellings that have been successfully remediated. At a possible cost of about a billion dollars this is an expensive way to purchase public peace of mind. It might be considerably cheaper to identify those houses which have been successfully remediated, or which could be made so with appropriate decontamination, and convince the public of the safety of such houses, than to proceed with wholesale demolition. As noted above solid brick and monocrete houses are by the nature of their construction less likely to harbour residual asbestos after the initial clean up in 1989-94. The budgetary impact of such an approach would be to significantly reduce the cost of the Mr Fluffy remediation.

If the Government had any lingering concern about such remediated houses it could specify that they must be demolished on transfer from the current owner(s). This arguably would adversely impact the net wealth of those who lived in such houses, as the value of their house and block would be reduced to the value of the block alone. However, for those who live in houses which are several decades old this is not a great variation from the current situation. Certainly in the Inner South Canberra area many unextended houses sell for little above the Unimproved Capital Value (UCV) of the block.

The ISCCC suggests that the Committee recommend that the Government adopt this modification of the Scheme to focus expenditure on those houses where demolition might make a difference in terms of the public's exposure to risk.

Use of the Scheme to Improve the Data on Asbestos Related Diseases

It is hard to make good estimates of the number of mesothelioma cases likely to be prevented by the Scheme, although it appears that these numbers would be small. In this regard the tone of the section "Managing Risk" on p20 of the ART "Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes" is quite misleading, as it gives the impression that the risk of acquiring an asbestos related disease from living in a Mr Fluffy residence is relatively high. It is true, as the report states, that (1) asbestos is a known carcinogen; (2) there is no known safe level of exposure; and (3) the risk of contracting disease is, in general ...the cumulative function of intensity of exposure over time. But this gives no information about likely risk in the absence of any information about the likely dosage, in fibre per ml of air, that residents have been exposed to.

By contrast Professor Bruce Armstrong, Emeritus Professor at the University of Sydney has suggested, after a study of the matter, that:

"Living in Mr Fluffy houses will probably have only a small impact on public health. One person, and perhaps up to three, will die from a mesothelioma due to living in a Mr Fluffy house."

This threefold uncertainty about outcomes reflects the fact that the risk factors for asbestos related cancers are not well understood. They are based on epidemiological studies of men exposed to asbestos at work mostly before the 1970s, with very inaccurate measurements of asbestos fibre concentrations in the air men breathed, work histories which were frequently incomplete and inaccurate, and poor documentation of types of asbestos to which men were exposed.

This latter point relates to evidence that different forms of asbestos have varying potencies in causing lung cancer and mesothelioma. It appears that Mr Fluffy used two types, Amosite (or brown asbestos) and Crocidolite (blue asbestos). Apparently most houses were insulated with amosite, while only a small proportion were insulated with crocidolite, which is not as good an insulator as amosite. The evidence is that crocidolite is perhaps five times more carcinogenic than amosite.

From conversations with the ART we understand that no attempt is being made to determine airborne asbestos fibre levels in Mr Fluffy houses before they are demolished, nor records kept of the amount of asbestos found in each house and whether it appeared to have leaked into living areas, nor of whether any asbestos that is discovered is amosite or crocidolite. This seems unfortunate, as the expenditure of a billion dollars and the demolition of about 1,000 houses should provide a useful factual basis to make improved estimates of exposure

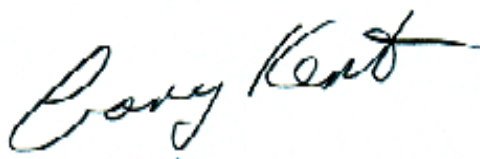
to asbestos, and, if former residents are tracked for the remainder of their lives, much improved estimates of the relationship between dosage and death rates.

Of course, it may be that this data is not being collected because it is believed that no deaths will result from current exposure levels. ART did respond that no tests for airport fibres were being undertaken because one would have to run the machine for months to find a fibre. This sounds like an exaggeration but it may reflect official knowledge that actual dosage levels in Mr Fluffy houses are low and possibly not much elevated above background levels, at least in most cases. If this is the case perhaps it would be more responsible to make this knowledge more available to the public, and indeed possibly educate the public about the nature of risk, rather than pandering to the popular perception that as there is no known dose below which it is safe to be exposed, any exposure is likely to be toxic.

We suggest that the Committee recommend that this data be collected and made publicly available.

We would be pleased to appear before the Committee, if it is thought we could add any value to its deliberations.

Yours faithfully

A handwritten signature in black ink, reading "Gary Kent". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Gary Kent
Chair
27 August 2015