

# Griffith/Narrabundah Community Association Inc.

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Mr Mick Gentleman, MLA  
Minister for Planning and Land Management  
[gentleman@act.gov.au](mailto:gentleman@act.gov.au)

cc Mr Gary Rake  
Deputy Director General. EPD  
[Gary.Rake@act.gov.au](mailto:Gary.Rake@act.gov.au)  
Mr Shane Rattenbury, MLA  
Minister for Health  
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Dear Minister

## **RESIDENTIAL SOLAR ACCESS ISSUES**

I am writing on behalf of the Griffith Narrabundah Community Association (GNCA) in connection with Draft Variation 346 – Residential Solar Access Provisions. As you may know, the GNCA was founded in 2000 and currently has over 200 members. You will be aware that the Environment and Planning Directorate (EPD) has proposed a Draft Variation (DV346) which would reverse some of the increased protections for solar access introduced by Variation 306 (V306), and indeed potentially reduce solar access rights for the more than 110,000 residential lease holders all over Canberra.

The GNCA is aware that EPD has been holding consultations in relation to DV346 in the hope of achieving consensus on the proposed changes before the final sittings of the Assembly prior to this year's elections. The last of these consultation meetings was on 5 July and EPD circulated two new compromise proposals for consideration on 8 July, asking that both the Community Sector and the construction industry produce consolidated responses by 9am on Monday 18 July. We understand that at the meeting of 5 July and after the new options were circulated it was made clear that the timeframe was too short to allow any attempt at a consolidated response to be coordinated, especially as the consultation was over the winter school holiday period.

In the absence of a coordinated response, John Edquist, the President of the GNCA, and a longstanding representative of the community sector in relation to this issue, lodged an individual response which explicitly only reflected the views of the author.

We attach a copy of Mr Edquist's submission "Saving the Garden City – Solar Access and Draft Variation 346" for your information. The GNCA is of the view that Mr Edquist's submission makes a number of helpful proposals and indicates a willingness on the part of the Community Sector to continue to negotiate on reasonable proposals for change in this area. We consequently commend Mr Edquist's submission both to you and to EPD.

We would also note that from the view of those who have not been involved in the discussions, DV346 does not make a strong case for change, indicating as it does that

“In general, the current provisions are considered to be achieving these aims of protecting the solar access and solar amenity of residential blocks and their neighbours; however certain elements have been identified within the provisions that require adjustment in order to better meet the needs and expectations of the community and industry.”

We note that the proposed increase in the height of the solar fence from 2.4m to 3.0m in the primary zone, and from 1.8m to 2.3m elsewhere represents increases of 25 per cent and 27.8 per cent in the amount of shadow permitted to be thrown on a neighbour's block. Such significant changes would generally not be regarded as merely inconsequential adjustments.

In an age of evidence-based policy, EPD needs to much more clearly articulate the problem that is to be solved, and why the proposed solution will best address the problem. In this regard, we note that there is no real evidence beyond vague complaints from the construction industry that any problem actually exists. It is clear that the community sector is prepared to consider changes to ameliorate difficulties that might be faced on small sized blocks in complying with existing solar access rules. However, the community sector would be understandably reluctant to agree to changes which would potentially reduce the solar access of all residential leases in Canberra merely to allow some future owner of the block to a leaseholder's north to build a larger house closer to the boundary. The proposal appears to reduce the amenity of the many for the advantage of a few, and it is not clear why the Government would think it appropriate or reasonable to advance such a proposition.

Yours sincerely



Leo Dobes  
Vice President  
GNCA

25 July 2016

Mr Brett Phillips  
Executive Director  
Planning Delivery  
Environment and Planning Directorate

[Terrplan@act.gov.au](mailto:Terrplan@act.gov.au)

Dear Brett

### **SAVING THE GARDEN CITY – SOLAR ACCESS AND DRAFT VARIATION 346**

This submission reflects the individual views of the author. Despite EPD's suggestion that the Community sector provide a single response this, as has been explained, is simply not possible in the time available, particularly as this is over a school holiday period. Nevertheless I believe that my views will be similar to those of much of the Community Sector when they have the opportunity to consider the matter.

All blocks suffer from limitations of some kind – size, shape, topography – which affect the design and size of the house that can be erected. To select solar access as the simplest constraint to be removed ignores the importance of this for mental health and wellbeing, encouraging people to engage in outdoor activities, and to passively and actively use access to sunlight to warm and power their buildings, thus reducing costs and emissions that are damaging to the world's atmosphere.

For some months EPD has been in discussion with the Community Sector and the construction industry in relation to possible changes in the solar access rules introduced in V306. These currently proposed changes are embodied in DV346. EPD first convened a meeting to discuss possible solutions to the supposed problems of solar access under the V306 rules in March 2014. The issue then went quiet for over 18 months until EPD convened the first of a numerous series of meetings in November 2015. The most recent of these meeting was on 5 July 2016.

Despite repeated requests to the construction industry to provide examples of the alleged problems that the solar access provisions of V306 have caused, nothing but anecdotal evidence has been advanced. It may well be that this simply reflects a reluctance on the part of the industry to draw attention to the shortcomings of some architects and or builders. However, in an age when Governments proclaim that they are committed to evidence based policy the industry and EPD will no doubt understand why the Community Sector is reluctant to accept the need for a global solution to a problems whose existence might be characterised by some as merely hear say. Against such a background of a problem only dimly perceived a more cautious or tentative and iterative approach might well be the preferred response, and I would recommend this route to the Government.

Nevertheless, while no concrete evidence has been brought forward, it is plausible that at least some owners of compact (less than 250m<sup>2</sup>) blocks will not be able to build freestanding houses on their blocks with appropriate solar access. While blocks of this size are not uncommon in some other Australian jurisdictions, dwellings on such small blocks are often town houses or terrace houses, sharing some wall(s) with other dwellings. Consequently the Community Sector has been prepared to take it on trust that there might be a problem with dwellings on compact blocks, and to contemplate a solution which, consistent with the caution recommended above, would be restricted to the location of the problem, viz compact blocks.

Following the last meeting on 5 July, EPD has sought written proposals in relation to a possible compromise on solar access by 9am Monday 18 July 2016. EPD has circulated two options for consideration arising out of proposals made at the end of the meeting of 5 July 2016. Unfortunately neither of the proposals advanced by EPD can be supported in their current form.

EPD's current Option 1 (there have been other options circulated before earlier meetings) would involve application of DV346 to all dwellings in all suburbs, in return for possible but very limited changes that might be introduced by mid-2017 or later. The process is so complex and the quid pro quo for acceptance of DV346 subject to so many contingencies (including the outcome of the 2016 Territory election and a possible new Government, a consideration not mentioned by EPD) that it puts in doubt its value and the likelihood of anything meaningful being delivered. This option is based on a proposal made by Glen Dowse but has been transformed into something much more complicated, whereas Dowse's proposal offered direct concessions now in return for general acceptance of DV346. As noted above the complexity of this proposal, the number of ways it could be derailed, and the lengthy timeframe for delivery means that it has to be rated as relatively unattractive.

EPD's current Option 2 proposes to reduce the height of the solar fence from the DV346 proposed 3m to 2.8m (leaving it still a good 400mm above the currently applicable 2.4m in V306). This proposal offers very little in return for prospective Community Sector support for DV346 and is consequently also not very attractive.

My preferred position is very close to one that has already been floated by EPD. Prior to the meeting of 5 July EPD circulated a list of possible compromises, one of which, 3a, read "DV346 does not apply to blocks of greater than 500m<sup>2</sup> in areas approved before 18 October 1993".

This indicates that EPD is prepared to consider limiting the application of DV346 to those blocks where it is plausible that there might be some problem. I welcome this proposal by EPD, and would like to see this approach pursued further. Consequently I propose that the above EPD option be recast to read as follows:

"DV346 does not apply to blocks of greater than 250m<sup>2</sup>".

This would mean that the existing rules introduced under Variation 306 would continue to apply to all other blocks.

This avoids any incompleteness in the solution, in that a compact block is likely to have trouble complying with the solar access rules whenever it was approved, either before or after 18 October 1993. This formulation would also avoid disputes about what is meant by an “area”, or by “areas approved before 18 October 1993.” (One wonders why the EPD text did not read “blocks approved before 18 October 1993” which it seems would have avoided this problem.)

The maximum size of the affected block is restricted to 250m<sup>2</sup>, to make sure that the provision does not unnecessarily sweep up those blocks for which it is most unlikely that there is a systemic problem. Restricting the application of the new DV so that it does not apply to Mid-size or Large blocks would also go some way to ensuring that continued future redevelopment of non-compact blocks in Canberra does not lead to the complete McMansionisation of the city, and would help in the maintenance of some meaningful local character, particularly those older suburbs exemplifying the Garden City character of Canberra. Rules which (even if obliquely) restrict the bulk of dwellings which can be built on a block have as their obverse the retention of more of the block for deep rooted and widely branched trees.

All that said, it may be that EPD has some valid reason for proposing 500m<sup>2</sup> as the upper boundary of applicability for the DV, and I would be happy to listen to any arguments advanced in defence of the higher limit.

Other participants in the meetings (eg Robbie Gibson) have raised the excessively generous horizontal and vertical tolerances permitted in locating shadow generating structures, and the liberality with which EPD is prone to “wave through” penetrations of the solar envelope for rooftop structures and equipment, and sometimes even parapets. Consequently I would welcome, in addition to the adoption of my proposal:

- changes to the building regulations to reduce the tolerances from their current 340mm to a still liberal and easily achievable limit such as 50mm or below;
- changes to the planning codes so that the solar envelope became a hard, mandatory barrier (ie no criteria) that the builder had to work within, with no penetrations permitted; and
- the solar access rules likewise became mandatory, with no associated criteria (especially ones that permitted anything provided it allowed “reasonable solar access”. This in effect means that to refuse to approve a DA on the basis of non-compliance with the criterion would mean that EPD would have to demonstrate that what was proposed was “not reasonable”, something that would appear to be extraordinarily difficult).

This is a brief conceptual outline only, and the precise details of how all these changes would actually be implemented would of course need to be clearly identified in subsequent discussions.

The construction industry representatives also raised the possibility of the establishment of some new mediation/arbitration system. The Community Sector agrees that it would be highly desirable to have a dispute resolution system that was accessible, timely and affordable and would be very happy to talk further with EPD and the construction industry about developing an alternative mechanism and or alternatively possible changes to make ACAT work more effectively

Yours sincerely.

John Edquist

18 July 2016

John Edquist [jedquist@pcug.org.au](mailto:jedquist@pcug.org.au)