



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

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Submission Cover Sheet

Engagement with Development Application Processes in the ACT

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Inner South Canberra Community Council

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Inquiry into Engagement with Development Application Processes in the ACT Submission by Inner South Canberra Community Council

INTRODUCTION

The Inner South Canberra Community Council (ISCCC) regards the Development Application process as crucial for Canberra's future as the nation's capital and we welcome the opportunity to make some recommendations that, if implemented, will improve the planning process in the ACT.

We recognise that the issues under consideration are complex. They include major developments like the re-development of the Red Hill Precinct, down to the shed at the bottom of the garden, and the stakeholders such as the neighbours affected by any development, the government, which controls the process and develops the planning policy, and the developers who undertake the building work.

There are frequently conflicts over the time taken to start any project, but we contend that in the 50 year or more lifetime of any building it is important that good outcomes are achieved. We do not need buildings that leak or residents that receive no sun. We need buildings that are consistent with the zero emissions target of the government and buildings that are energy efficient and space for the urban forest to prosper and green space for recreation.

RECOMMENDATIONS

R1: Development Applications (DAs) are mandatory and publicly available for all knockdown rebuilds.

R2: All parameters used to determine factors such as plot ratio, solar envelopes and set-backs should be clearly shown in the DA.

R3: All DAs be notified and accessible on DA Finder.

R4: Software be developed so that anybody can click on any block and access easily all the building codes and lease conditions of that block.

R5: The following categories should be added to the pre-DA community consultation list: (f) block amalgamations (g) development affecting a property listed (or provisionally listed) on the ACT Heritage Register, and (h) all Merit Track applications.

R6: All Development Applications and the decisions made on them by EPSDD be made readily available on the government website, including:

- The assessing officer's name;
- The assessing officer's assessment of the DA and reasons for decision against every applicable rule or criterion.

R7: Retrospective DAs should only be approved in exceptional circumstances.

R8: A group independent of the Planning Directorate should be established to review decisions by EPSDD when necessary.

R9: The quantitative rules set the minimum standard in the development codes, and subjective terms and language are removed from the criteria.

R10: All tree and verge protection actions must be articulated in the DA and monitored during the building process.

R11: All compliance responsibilities associated with planning and development reside in EPSDD and the compliance responsibilities are staffed so that irregularities can be acted on promptly.

R12: Random audits are undertaken of certifiers' assessments that proposals are exempt, until such time as knock-down rebuilds are subject to DAs, as also recommended in R1.

R13: Penalties are increased to a significant level for a certifier's non-compliance with relevant Acts and codes.

R14: There is public reporting of a certifier who has been found to have incorrectly assessed the exempt status of a development proposal.

COMMENTS ON ISSUES IDENTIFIED BY THE COMMITTEE OF INQUIRY

1) Community engagement and participation in the Development Application process including:

a) The accessibility and clarity of information on Development Applications and Development Application processes, including Development Application signage; the Development Application Finder app; and online resources

There is scope for improving the accessibility and clarity of information on DA's, particularly for knock-down re-builds approved by private certifiers. These developments can affect local streetscapes as well as neighbours, but the plans are not publicly available without making FOI requests. This is completely unsatisfactory. We therefore recommend that:

R1: Development Applications are mandatory and publicly available for all knockdown rebuilds.

It is often difficult to check the stated Private Open Space, Plot Ratio and other parameters, because the numbers used in the calculations are either not provided or are unreadable on the available plans. We therefore recommend:

R2: All parameters used to determine factors such as plot ratio, solar envelopes and set-backs should be clearly shown.

DA Finder is a very valuable resource, but it does not include all DAs. We therefore recommend that:

R3: All DAs be notified and accessible on DA Finder.

The Territory Plan and the associated codes in the present system are unnecessarily cumbersome and opaque. ACTmapi is helpful but is still not easy for a member of the public to use. To make the Territory Plan more user friendly, we recommend that:

R4: Software be developed so that anybody can click on any block and access easily all the building codes and lease conditions for that block.

b) Pre- Development Application consultation and statutory notification processes

Pre-DA Community Consultation Guidelines are currently limited to a development proposal for one or more of the following:

- (a) a building for residential use with 3 or more storeys and 15 or more dwellings;
- (b) a building with a gross floor area of more than 5000m²;
- (c) if the development proposal is for more than 1 building—the buildings have a total gross floor area of more than 7 000m²;
- (d) a building or structure more than 25m above finished ground level;
- (e) a variation of a lease to remove its concessional status.

Pre-DA Community Consultation Guidelines have the potential to improve the outcome of major projects. However, from time to time, the outcome appears to be pre-determined, making a mockery of any consultation, and, in some cases, pre-DA community consultation is not even occurring.

Examples of these failings are:

- The Manuka Oval Lights and Media Centre were approved, even though a Conservation Management Plan and Land Management Plan required by the legislation had not been done.
- Call-in powers were used for the development on Section 42 Griffith, even though some aspects of the development were non-compliant with codes relating to multi-unit housing developments.
- DA 201833731, Blocks 3 and 4 Section 96 Griffith was not subjected to pre-DA community consultation. This DA is only part 1 of a comprehensive DA to redevelop the whole of section 96 (Section 96 was the site of the Capitol Theatre.) Part 1 proposes a six-storey hotel etc. in the heart of Manuka, on the site of the old post office. We are disappointed that the Manuka Oval precinct master plan, promised by the Chief Minister in 2016, has not progressed, and that such significant developments can proceed without pre-DA consultation. Development in the Manuka precinct has the potential to make a lasting contribution to the future of Manuka. Consequently, Manuka Traders, local community associations and interested community members should have been engaged in effective, open pre-DA discussions.

In addition, many other developments affect local streetscape and impact on the amenity of local residents, e.g. smaller scale residential redevelopments including dual occupancies and block amalgamations. Consequently, **we recommend that:**

R5:

(f) block amalgamations

(h) all Merit Track applications

(g) development affecting a property listed (or provisionally listed) on the ACT Heritage Register,

be subject to mandatory pre-DA community consultation by being added to the Pre-DA Community Consultation list.

c) The availability and accessibility of current and historical Development Applications and decisions in relation to Development Applications, including reasons for Development Application approvals, conditions or rejections.

Current DAs, if identified as Major Merit track, are usually accessible, but Minor Merit track, including those approved by certifiers, in RZ1 can be particularly difficult to access. In particular, we recommend that all knock-down re-builds be assessed by EPSDD, rather than private certifiers, who have been engaged by the builder and/or owner. Decisions are usually available to people who have made submissions, but it is not easy to access those made over a year ago. We have not been able to do this through the website. It should not be difficult to archive documents from previous years and make them accessible to readers who register to access the archive website.

R6: When a decision is published in relation to a DA, we recommend that EPSDD should also publish (via the internet):

- **The assessing officer's name;**
- **The assessing officer's assessment of the DA and reasons for decision against every applicable rule or criterion**

2) The accessibility and effectiveness of Development Application processes, including:

a) The information provided in relation to the requirements for Development Applications;

As stated above, the information provided is often inadequate. It is not accessible on the government website, and all the dimensions are not always provided. Not all DAs are shown on the Finder app.

b) The current development assessment track system;

It is generally not possible to obtain plans or detailed information about proposed DA-exempt developments without going through the Freedom of Information processes. This is unnecessarily bureaucratic and serves only to cloak in secrecy, matters that should be open to public scrutiny and discussion. There is no reason the DA website should not include the plans that would be provided for a normal Development Application so that parameters such as solar access, plot ratio, dimensions of private open space and setbacks can be determined. While certifiers are still able to approve knock-down re-builds, it should be mandatory for the certificates to be made available. These should provide, with full justification – not just ticked boxes – where there is any departure from Rules in the Codes under relevant legislation. Our R1 & R2 cover this issue.

c) The Development Application e-lodgement and tracking system, e-Development;

No comment.

d) Processing times for Development Applications;

The 30 day turnaround provides little time for immediate neighbours to seek expert advice. The 15 day turnaround for Heritage Unit advice is patently inadequate.

e) Retrospective Development Applications;

To minimise incentives to those who build and then seek retrospective approval, there should be a substantial additional fee applied and an automatic on-site inspection to ensure compliance with building regulations. In addition, neighbouring properties should receive a written update and be informed of the final decision. This deterrent would be effective since the additional cost and compliance requirements would be borne by those who do not follow the rules whereas currently, those who do comply are disadvantaged by time waiting for approvals.

Retrospective approvals seem to be routinely granted even where questionable claims are made by applicants that they were ignorant of requirements, which is barely credible when registered builders and architects manage the development. Granting retrospective approvals should require a written explanation of how the situation has arisen and limited approvals should be granted, e.g. emergency work to provide structural support from unforeseen issues. There are, for example, simply too many cases where plot ratios are exceeded (which disadvantages law-abiding developers) and other questionable practices occur. Licensed builders and architects who regularly seek retrospective approvals should not be gaming the system and any examples of compliance avoidance should be considered in license renewals.

In general, these should not be approved, and penalties should be applied for “significant” breaches in any of the Codes.

R7: Retrospective DAs should only be approved in exceptional circumstances.

A deterrent could consist of loss of points/suspension of the builder’s licence; and, in the case of an architect actively engaged on the project, a report to the Board of Architects.

f) Reconsideration and appeal processes;

The current process in place for appealing decisions would be improved if an independent body examined the case. At present the original decision to either approve or reject an application is made in the Planning Directorate and any review or reconsideration is also undertaken in the same Directorate.

R8: A process independent of the EPSDD Directorate should be established.

Consideration should be given to re-establishing the role of the Commissioner of Land and Planning. This role was independent of the planning body, and, senior planners rotated through the office.

Objectors to particular DAs were included in the review process and were given a written copy of the final decision. All parties retained the right to appeal the reviewed decision.

ACAT, as it currently operates, is both cumbersome and costly. The best plan is to try to minimise disputes and ambiguities in the development codes so that the scope for misunderstanding and disagreements is minimised. As a first step, pending full-scale review of the Territory Plan, **we recommend that:**

R9: The quantitative rules set the minimum standard in the development codes, and subjective terms and language are removed from the criteria.

g) Heritage, Tree Protection and Environmental assessments.

All three of these issues are essentially compliance issues by the developer and the EPSDD.

There are two major problems with current legislation and subsidiary Codes. Builders and developers effectively have immunity from requirements that prohibit parking on verges, storing bricks and other materials on verges. Heavy machinery and trucks parked next to street trees result in inadequate protection for trees and verges, resulting in compaction of soil that will be detrimental to the long-term health of trees.

R10: We recommend that all tree and verge protection actions must be articulated in the DA.

3) Development Application compliance assessment and enforcement measures.

The Code Rules are broken by EPSDD assessors and certifiers and by the builder.

CASE STUDY:

D420L629546 - 16 Landsborough Street, Griffith.

There were four breaches of the planning codes in the DA that was approved by EPSDD.

Breaches in Planning Codes in DA approved by EPSDD

1. Plot Ratio

The Plot Ratio of 49.95% provided in the DA excluded the areas of Alfresco (34m²) and the Covered Entry (≥ 6m²) from the GFA. Even invoking the rule which under some circumstances would allow the garage to be counted as only 36m² would still yield a plot ratio of 50.15%, greater than the mandatory maximum of 50% (Rule 1 SDHDC).

2. Garage Wall

EPSDD approved a 3.4m high garage wall to be built 200 mm in from the northern boundary of 18 Landsborough St. The Solar Envelope Rule only permits a wall 2.4m high on the boundary and about 2.55m high if built 200 mm in from the boundary (Rule 7 SDHDC), so the wall breaches this by 0.85m, or about 30%. Hardly a minor deviation.

3. Intrusions beyond the front building line

The eaves and awnings at the front of the building intrude into the 6m front setback (Rule 11 SDHDC) by more than the permitted 600mm (Rule 17 SDHDC). The relevant Criterion lists 5 elements which must be met, including “space for street trees to grow to maturity”. The DA asserts, incorrectly, that there is no street tree in front of the property and that this Criterion is consequently met. There is in fact a tree on the verge.

4. Intrusion by Cabana over the rear setback

The plans provide for a Cabana at the rear of the property located only 1.642m from the rear boundary. The applicable rule (Rule 12 SDHDC) specifies a minimum rear setback of 3m. Hardly a minor deviation.

Failure of builder to comply with the approved DA

Garage Wall

Senior Building Inspector [REDACTED] from Access Canberra determined that the garage wall was 4.3m high, rather than the approved 3.4m. The wall consequently exceeded the approved height by 0.9m or 27%.



Non-compliant south-facing wall almost on the boundary between 16 and 18 Landsborough Street.

Over development of the Alfresco

The Alfresco is shown as having a roof supported by five pillars located along the boundary line with 14 Landsborough St. However, a solid brick wall and large window looking over the fence into the private open space of 14 Landsborough St were substituted for these five pillars during construction. Such a wall on the boundary breaches both the Building Envelope rule (Rule 6 SDHDC) and the rear zone side setback rule (Rule 12 SDHDC) and is clearly not in compliance with the Development Application as approved.

Failure of policing and enforcement

We were not aware of the problem of the wall until December 2016. After discussions with Access Canberra the developer was required to lodge a supplementary DA to test whether what had been constructed could be approved. This was done on 22 February 2018 and the wall was not rectified until mid-2018.

The problems should have been noticed by Access Canberra and rectified sooner than this.

Furthermore, Access Canberra did not appear to have taken any steps to check if the Alfresco area was being built in accordance with the plans. A quicker response would have been desirable.

R11: We recommend that all the compliance responsibilities associated with planning and development reside in EPSDD and the compliance responsibilities are staffed so that irregularities can be acted on promptly.

R12: Random audits are undertaken of certifiers' assessments that proposals are exempt, until such time as knock-down rebuilds are subject to DAs, as also recommended in R1.

R13: Penalties should be increased to a significant level for a certifier's non-compliance with relevant Acts and codes.

R14: There should be public reporting of a certifier who has been found to have incorrectly assessed the exempt status of a development proposal.