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2018-2019 Budget Consultation

The Griffith Narrabundah Community Association (GNCA) welcomes the opportunity to provide input to the ACT Government's 2018-2019 Budget Consultation process.

The GNCA does not wish to propose the introduction of new services or an increase in the provision of existing services in a constrained ACT Budget situation.

We do, however, consider that a number of existing services can and should be delivered more efficiently and effectively. Several proposals are outlined below, but they should not be regarded as being exclusive. While our proposals are mainly relevant to Griffith and Narrabundah, they are also applicable to the residents of Canberra as a whole.

A diverse range of areas is covered below, but the thrust of this submission is that rules and regulations should be enforced by providing adequate administrative resources. Non-compliance creates uncertainty in social and economic activity because of its arbitrary and discriminatory nature, and because it imposes transaction costs. It also results in a deleterious loss of trust in the governance of the ACT because of a perceived corruption of administrative processes. Recognising that ensuring consistency and compliance requires the use of scarce resources, we suggest a number of potential additional sources of revenue.

Non-compliant development and building applications

On 15 January 2016, the then President of the GNCA, Mr John Edquist, wrote to Mr Gary Rake (Deputy Director General, EPSDD) regarding the knock-down rebuild at number 16 Landsborough Street in Griffith, in support of complaints made by a number of residents through Access Canberra.

The key issue was the height of the garage wall – determined by Access Canberra to be 4.3m high – on the boundary with 18 Landsborough Street, was well above the 3.4m approved in the DA. Even this approved height breached both the solar access rule (Rule 7 of the Single Dwelling Housing Development Code) and Rule 6 (Building Envelope) of the same Code, which would have allowed a wall at this position only a little over 2.5m high. The mandatory 50 per cent plot ratio at 16 Landsborough Street had also been exceeded, and set-backs at the rear and front were non-compliant by up to 1.5m. The number of apparent breaches points up the shortcomings of restricted publication of DA Applications in an environment where ACTPLA relies on submissions from the public to become aware of possible non-compliance in an application.

Rather than requiring the builder to comply with the Government's building rules and the plans that had been approved for 16 Landsborough Street, the Government's Senior Building Inspector appeared content to simply recommend a submission by the builder of a revised Development Application that would regularise the breaches. Further strong protests by a large number of nearby residents and by the GNCA were required to persuade ACTPLA to *not* agree to such a DA variation, and to insist that the builder reduce the height of the wall and to comply with the plot ratio, consistent with the Development Application as originally granted.

Episodes such as that at 16 Landsborough Street waste scarce resources; both the time devoted by government employees, and the unpaid time of members of the community. However the damage done to community trust in the Government's enforcement of its own rules is more pernicious because it gives rise to a growing concern regarding the moral and administrative corruption of established processes of good governance.

The economic and administrative efficiency of any society is dependent on trust in the impartial and transparent rule of law in order to reduce the transaction costs associated with allowing for uncertainty in carrying out investment and commercial transactions. We therefore believe that a key long-term structural budgetary measure should be the provision of increased resources to ensure compliance with ACT building codes.

Recommendations:

1. provision of adequate additional resources to oversight development and planning processes and procedures to ensure that approved plans are fully compliant with the ACT Single Dwelling Housing Development Code.
2. imposition of substantial on-the-spot fines on builders who deviate from approved plans. Fines should be large enough to cover the additional costs required to inspect building activity and to supervise any subsequent rectification work. (Note: we are not suggesting hypothecation of revenue from fines.)
3. ACTPLA decisions should be published and should include a technical appendix where ACTPLA shows its calculations as to how the development concerned complies with the ACT Single Dwelling Housing Development Code. Box ticking by architects is not enough.

Certification of building quality and activity

Complaints about shoddy building practices have increased in frequency over the last few years in the ACT. Privacy and defamation considerations preclude presentation by the GNCA of specific allegations about building malpractice. However, residents' concerns about faulty waterproofing of roofs, basements and balconies have been reflected over a long period in media reports such as 'ACT Government slow to act on dodgy building quality: Master Builders Association' (e.g. Chris Kimball, *ABC Stateline* 21 May 2010; and Anna Morozow, *ABC News* 27 March 2014).

With rare exceptions, buyers of houses and flats do not have the expertise to assess the quality of their purchases. This is despite certified building inspection reports being provided and buyers organising their own independent inspections. Even where expertise is available, it is often not possible, without destructive testing of walls or underfloor areas, to determine the quality of the work performed. Builders have full knowledge of the quality, but buyers do

not. Because situations of information asymmetry such as this are likely to result in market failure, governments have an important role to play.

The current system of certification is clearly not working. Certifiers' responsibilities are limited to the building itself, and they cannot be on-site continuously to inspect work as it is done. A first step may be to require a greater number of hold points and associated certification, particularly before specific works are completed and covered over with cladding or other materials.

Phoenix companies have been used to avoid responsibility for shoddy work. A further reform that would merit consideration is the imposition of overall responsibility on the builder in person, rather than on the company contracted to carry out the construction. Stringent licensing procedures for builders, combined with hefty personal financial penalties would increase purchase costs to buyers of houses, but they would be more likely to avoid expensive remediation costs later.

Financial penalties could be administered in the form of bonds (deductible security deposits), rather than ex post fines. Builders with limited financial means would be likely to borrow the deposit, with banks, rather than government, having to undertake reliability checking of builders. It might be expected that serial non performers might find it more difficult to obtain finance from banks, at least at the interest rate they wanted, imposing an effective free market incentive on builders to comply with the appropriate building standards. The size of the deposit should be commensurate with the value of the premises being constructed.

Recommendations:

1. More closely regulate and penalise Certifiers who sign off on shoddy work, or don't comply with the general exemption criteria, and introduce clearly defined hold points where Certifiers must be involved and government regulators undertake random spot checks to ensure compliance.
2. Introduce more stringent licence testing for all builders operating in the ACT, with non-hypothecated fees to cover the additional cost to government of administering the tests.
3. Builders should be required to provide a substantive bond before building commences in order to cover potential rectification of unsatisfactory work. The size of the bond should be commensurate with the value of the premises being constructed.
4. Certifiers should be responsible for all aspects of building work, including compliance with approved plans, protection of trees and verges, storage and disposal of rubbish, etc.
5. The penalties for inappropriate certification by a Certifier be increased to a level where a penalty would constitute a reasonably large proportion of the typical annual income of a Certifier.

Development Application (DA) exempt construction

We are aware that the Planning and Development Regulation 2008 provides for some developments, including single dwellings, to be DA exempt and for such works to be certified by private certifiers appointed by the builder or developer. Whilst the following general exemption criteria apply to such work we understand that problems still exist where certifiers don't adequately enforce the following general exemptions:

"These general criteria must be met for all development approval exemptions, as well as the specific ones that apply for different structures.
1. The development must not be located in an easement (proposed or existing), utility infrastructure access or protection space without the written permission from whoever owns that space (e.g. a utility).
2. A development must not interfere with plumbing and drainage clearances.
3. The development must not breach the Tree Protection Act 2005 or cause any part of a building or structure (other than a class 10 building or structure) to be on heritage listed property or property which is the subject of a heritage agreement. (i.e. all development, except for minor non-habitable buildings or structures requires a DA if it is on a heritage object or place.)
4. The development must comply with the lease."
5. The development must not increase the number of dwellings on a block to two or more dwellings.
6. The development must comply with any other criteria that apply to the development."

We understand that it was decided, in response to the destruction of houses in the 2003 Canberra bushfires, to allow owners to rebuild without submission of a Development Application. This policy has subsequently been extended both to areas of greenfield development and to properties in developed suburbs where a building has been totally demolished: so-called 'DA exempt' cases. Renewal of older areas of Canberra, combined with the demolition of Mr Fluffy houses, has seen a considerable increase in the number of DA-exempt properties.

Two deleterious consequences of the DA-exempt convention are a lack of transparency, and the lack of a link to the monitoring of compliance with rules on protection of trees and verges.

It is apparently not possible for neighbours of a DA-exempt property, or other residents, to formally obtain a copy of the building plans. It is therefore not easily possible for residents to check whether a building that is under construction will comply with rules about the solar envelope or plot ratios. Copies of plans can only be accessed through the Freedom of Information mechanism.

Further, there is a lack of coordination within the ACT Government regarding DA-exempt properties. We understand that the Environment, Planning and Sustainable Development (EPSD) Directorate does not automatically inform the Transport Canberra & City Services Directorate (TCCS) when building approval has been granted. Unless TCCS is made aware of building activity, it cannot properly monitor compliance with rules regarding trees and verges.

Given that the urgency of rebuilding after a bushfire no longer exists, consistency in the treatment of construction activity is best served by the application of uniform standards to all residential construction activity. There is no longer a defensible rationale for treating 'knock-down' developments differently to other construction projects.

Recommendations:

1 The category of DA-exempt construction should be discontinued for developments where an existing residence is demolished, reserving it to cases of natural disasters.

2 Until the DA-exempt category is abolished, builders should as a minimum be required to make plans available under the same conditions as a construction that is not DA-exempt.
3 A Certifier who has Certified that a proposed structure is DA exempt should be required to notify both the EPSD and TCCS Directorates of the Certification.

Trees and verges

Canberra's urban forest is a community asset that generates benefits in the form of positive aesthetic externalities, reduction of summer temperatures and a carbon sink. Any damage to trees therefore reduces the well-being of residents. Equally important, it imposes a financial burden on the ACT Government when dead or damaged street trees need to be replaced.

The growth of street trees can be affected adversely through soil compaction by limiting access to water, nutrients and oxygen. Suppressed growth can also make trees more susceptible to disease and insect pests. Builders are therefore required to fence off the verge and street trees while undertaking construction. However, this requirement is being increasingly ignored. The GNCA has for some years provided biannual reports to TAMS (and its successor, Transport Canberra & City Services) about non-compliant builders in Griffith and Narrabundah, but little or no effective action has been taken.

We understand that the number of Rangers available to monitor builders' compliance is insufficient, and that they lack the necessary powers to require immediate compliance. We also understand that the Planning area had its own compliance officers in the past who responded to breaches of building and other issues, but believe that this function no longer exists in the Environment, Planning and Sustainable Development Directorate.

The then GNCA President, John Edquist, wrote to you on 11 October 2014 requesting that more Rangers be provided. We wish to reiterate this request because the situation has worsened, particularly with the number of DA-exempt Mr Fluffy rebuilds.

The photographs below were taken in the space of a week in September 2017 at several sites on only one street (Jansz Crescent) in Griffith. They illustrate the more egregious instances of misuse of the verge by builders. Some residents along Jansz Crescent have been forced to take action by placing signs and white-painted stones on their verges to prevent tradespersons and builders working next door, or further along the street, from parking on their verge.

We note that the private sector appears to be imposing more stringent conditions on builders than the ACT Government. The *Building and Siting Guidelines* for the new Molonglo Valley residential development of Denman Prospect impose bonds on all purchasers of land. The bond is returned only after building is complete, and only if all conditions have been observed. For instance, owners must ensure that 'the Public Domain adjoining the Block is protected by way of appropriate 1.8 metre high fencing', and a 'waste enclosure or waste containment area' must be maintained on the block during construction.

We understand that the success of the Denman Prospect system is due to strict enforcement of the rules by the developer, combined with intensive monitoring. Developers and builders elsewhere in Canberra should also be required to lodge bonds and be held strictly accountable by government agencies for their building practices, and protection of verges and trees, as well as compliance with any other conditions that may be imposed.

The large truck on the verge on La Perouse Street just opposite the northern end of Jansz Crescent is parked there almost every night with impunity, with considerable compaction of soil on the verge (middle picture below). Despite the statement on the Access Canberra website about parking on verges being illegal (https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/1379), no action is ever taken by parking inspectors. And the picture of construction at number 70 Stuart Street that has blocked off pedestrian access to the footpath, as well as misusing the verge, speaks for itself.

Unfortunately, failure to take firm action against builders who do not comply with the Government's rules on protection of verges and trees will encourage a self-reinforcing snowball effect. When action is not taken immediately, other builders become aware that the rules are not enforced, so they will also ignore them. The refusal of parking inspectors to take action has resulted in the incongruous and discriminatory situation where residents can be fined for overstaying a designated parking spot in Civic by a few minutes, but builders who breach parking regulations effectively face no penalty at all.

Recommendations

1. increase the number of Rangers employed by the ACT.
2. deploy more Rangers to protect street trees against misuse and damage by builders and developers.
3. legislate to permit Rangers to impose on-the-spot fines (or deductions from bonds) for non-compliance with rules for protection of verges and street trees.
4. restore the ability of parking inspectors to impose fines for parking on verges, whether at the building site or elsewhere.
5. consider the reintroduction of a compliance group within EPSD that focuses on enforcement of DA conditions and regulating the role of building certifiers.

General enforcement of regulatory provisions

Lack of enforcement of regulations is eroding trust in the governance of the ACT.

The problem appears to be driven partly by the failure of legislators to ensure that regulations are complemented by the provision of adequate resources for their enforcement. A rigorous social cost-benefit analysis of regulatory proposals would include the cost of continued future enforcement, but such analyses do not appear to be carried out as part of the decision-making process. If they were, it is likely that legislators would be more circumspect in the number of ineffective regulatory measures adopted.

Recommendations:

1. The Legislative Assembly adopt the practice of requiring a rigorous social cost-benefit analysis of all major regulatory proposals prior to their consideration and implementation.
2. Regulations passed by the Legislative Assembly should be accompanied by sufficient funding to ensure their effective enforcement into the future.
3. Legislative sunset provisions should be considered for all regulations as a means of ensuring regular review of their efficiency and effectiveness.

Potential areas of additional revenue generation and cost cutting

The GNCA recognises that jurisdictions like the ACT are limited in the extent of revenue sources that their governments can access. Traditional sources like stamp duty, land taxes and rates are ultimately constrained by political considerations and the financial capacity of residents. The growing disquiet in the community about the extent of increases in rates is already strong enough to induce increased numbers of individual residents to write letters to the editor of the Canberra Times.

Requests for additional resources (e.g. more Rangers) therefore require increased revenues, or decreased expenditure in other areas.

The GNCA recommends that a detailed assessment be carried out by the Treasury and Economic Development Directorate to identify the scope for increased revenue collection, as well as cost-reduction. Potential examples might include:

- Increased penalties for non-compliance with rules and regulations, including traffic infringements, breach of planning approvals, DAs, etc. This approach should be supported by the introduction of a revenue recovery agency tasked with recovering outstanding payments. The effectiveness of revenue collection could be further enhanced by linking non-payment of outstanding parking fines to suspension of drivers' licences and cancellation of car registration as has been done in Victoria and NSW.
- A comprehensive review of land use charges across the city that ensures that builders, developers and others all pay their share for using public land during construction, for business purposes or for storage of items and materials. We understand that charges for the use of public land in the ACT are levied on a precinct basis meaning that land use charges in city precincts are generally higher than elsewhere. A more consistent

approach and fewer fee exemptions would significantly increase revenue that would cover the additional budgetary expense of enforcement and regulation.

- Greater attention to recovering the social cost of negative externalities, including damage to local roads and street furniture by heavy trucks during construction activity, noise and dust created during building, lack of protection of public assets such as verges and trees, spillover of rubbish from building sites onto streets, etc.
- Delaying expenditure on large-scale prestige projects can be beneficial from a budgetary perspective. A case in point is the Woden extension of the light rail project. An additional advantage is that valuable lessons about costs may be learned from the Gungahlin tram project. A delay while more information is collected reduces investment uncertainty; in effect the use of a real options approach.
- Increased contractual penalties; for example for the failure to carry out scheduled street sweeping, especially in the autumn months. Accumulation of leaves and other material clogs stormwater drains and increases pollution in Lake Burley Griffin.
- Cost-effective substitution of capital for labour. Installation of wooden bollards on Austin Street (photo below), for example, has been successful in preventing illegal parking under trees at Griffith Oval and hence the need to assign parking inspectors to the area. Similar action could be taken with respect to the public land such as that bounded by Jansz Crescent and Carstensz and La Perouse Streets, which tradesmen regularly use to access properties. One photo below shows the well-worn vehicle tracks in the area.

The GNCA would be happy to have this submission made publicly available on the Budget Consultation website.

Yours sincerely,

Leo Dobes

Leo Dobes
President
4 October 2017