



## Environmental Defender's Office ACT Inc.



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Mr Andrew Barr, MLA  
Minister for Planning  
GPO Box 1020  
Canberra 2601

13 October 2010

By email

Dear Minister

### **Re: Planning and Development (Public Notification) Amendment Bill 2010**

I am writing to you to recommend amendments to the Planning and Development (Public Notification) Amendment Bill 2010 which was introduced into the Assembly on 26 August 2010.

The EDO is pleased that the Government has introduced some amendments which deal in some way with concerns raised by the EDO by letter to you dated 22 September 2009 relating to the consequences for ACTPLA's failure to correctly notify development applications (a copy of this is attached).

The EDO is of the view that the concerns raised by EDO would be best addressed by amendments along the lines as proposed in our previous letter and as proposed in the Planning and Development (Notifications and Review) Amendment Bill 2009 (a private members Bill introduced by Greens member Caroline le Couteur which as you will know was negated on 23 June 2010).

However, noting that this Private Member's Bill was not supported by the Government or Opposition, the EDO makes a number of recommendations which it believes will improve the operation of the current Bill.

Whilst the EDO notes that the amendments proposed in the current Bill attempt to address the concerns raised in our letter we have a number of residual concerns relating to

- i) The effect of ACTPLA's failure to notify adjoining premises or registered interest-holders
- ii) The obligation to renotify a proposal only if ACTPLA becomes aware of defect before the public consultation period ends
- iii) The lack of legal recourse if these renotification requirements are not complied with.

### ***Effect of failure to notify adjoining premises or registered interest-holders***

As you will be aware, the current Bill requires renotification of development proposal in certain instances where there has been an incorrect notification.

As you will also be aware, some proposals (certain merit track proposals) require 'minor' public notification, that is notice to adjoining premises, and others (impact track proposals and certain merit track proposals) require 'major' public notification, which involves notice to adjoining premises, a sign on the property and a notice in the paper. In addition if the application involves a lease variation, the registered interest holders must be notified.

Where an adjoining leaseholder or a registered interest-holder must be notified, the Bill currently only requires renotification if the contents of the notice are incorrect, incomplete or misleading **and** this may affect a person's awareness of the development proposal or restrict their opportunity to make representations.

It does not cover the situation where there has mistakenly been no notification at all or only partial notification of a proposal to adjoining premises or registered interest-holders (under s153 and 154). For example, if some, but not all, adjoining landholders have been notified.

The EDO is aware of a recent development proposal involving the former west Belconnen landfill (development application 201018282), where an adjoining landholder was not notified as required under s153. I note that in this case the landholder was made aware of the proposal by a third party and was able to make a representation within the consultation period. However, if ACTPLA failed to notify a landholder as required, and the landholder was not made aware of the proposal and consequently did not make a representation, the amendments proposed in the current Bill would not remedy this situation and require notification of the proposal. This is because the amendments only require renotification where there are defects in the **contents** of the notice.

The EDO recommends that the Bill be amended to require renotification if there has been no notification, or only partial notification of a proposal, either to an adjoining landholder as required, or to registered interest-holders (under s153 and 154). This recommendation is consistent with the amendments proposed in this Bill to s155 which would require a proposal to be renotified if a sign was not displayed or a notice was not published (see proposed new s155(1A)(b) and 155(1C)(b)).

### ***Renotification only if ACTPLA becomes aware of defect before the public consultation period ends***

As you will be aware, the current Bill also only requires renotification if ACTPLA becomes aware of the defect before the public consultation period ends.

The EDO recognises that the amendments are proposed to give some certainty to developers and not to provide for an open ended process. However the EDO notes that other jurisdictions operate by allowing recourse even after the relevant public consultation period has closed.

As previously noted in our earlier letter, as far as the EDO is aware, no other Australian jurisdiction specifically provides that development approvals will not be invalidated even if the public has not been notified in accordance with the relevant statutory notification

requirements. Indeed, the planning legislation of several states stipulates that specified development approvals are **invalid** if the public has not been appropriately notified and given the chance to make representations or submissions.

The relevant consultation periods are short (between 10 and 15 working days after notification) and it may well be after this time that a person becomes aware of any defect. This should not affect the requirements for ACTPLA to renotify a proposal where it has not followed the correct statutory procedures.

#### **Failure to follow statutory renotification requirements**

Indeed the amendments do not really address the heart of the EDO's concern, being the apparent lack of recourse if ACTPLA fails to follow the correct statutory procedures.

For example, if ACTPLA failed to comply with the renotification requirements provided for in the proposed amendments, s153(5), 154(3) and 155(6) of the Planning and Development Act still provide that the validity of a development application is not affected. This means that there is still no apparent recourse if ACTPLA fails to follow the required statutory procedures, including any requiring renotification of a proposal.

The only way that the EDO believes that this concern can be adequately addressed is by amendments as proposed in our original letter of September 2009, along the lines as introduced in the aforementioned Planning and Development (Notifications and Review) Amendment Bill 2009.

I look forward to your consideration of this issue and your reply.

Please do not hesitate to contact me if you or your staff would like to discuss this further.

Yours sincerely

**Environmental Defender's Office (ACT) Inc.**

Kirsten Miller  
Principal Solicitor

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Caroline LeCouteur