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Electoral Reform Secretariat

Department of the Prime Minister and Cabinet

P O Box 6500

Canberra ACT

Submission to Electoral Reform Green Paper.

My comments are directed towards "strengthening Australia's democracy, which is the aim of this Electoral Reform Green paper. I propose to draw attention to what I see as neglect for the principles of democracy by my local Council, dating back over 7 years. The principles I am referring to are the favouring of popular rights, upholding the interests of the common people, social equality and government for the people.

My main concerns are in the area of overdevelopment and the failure to fairly enforce development controls. I note that options for the reform of Local Government are outside the scope of the Green Paper, but, of course, Local Government development issues are influenced by the demands of State Government and now, increasingly, by the Australian Government.

The issues I raise are quite extensive but they are only some of the factors that convince me that reform of the regulatory and electoral processes is necessary :-

My first experience of the abuses of the regulatory process and the failure to uphold the interests of the community occurred some 7 years ago in relation to a townhouse development adjoining our property. It became very apparent that during the demolition and early construction stages of the project that several conditions of consent had been breached. We contacted Council, which issued an emergency stop work. Penalties were imposed. The builder was also convicted at Local Court for improper asbestos disposal procedure. All of this was initiated by the public.

A Private Certifier had been appointed for the project, so I lodged allegations with the Buildings Professionals Board that the certifier had been negligent. I made 7 allegations. BPB's investigative officer decided that there was a reasonable likelihood that the Administrative Decisions Tribunal would find that the certifier was guilty of unsatisfactory professional conduct on most of my allegations. However, the final decision of the Director of BPB was that the certifier would be issued with a reprimand, but in doing so, he dismissed all of my allegations. The most surprising decision was that the certifier could not be held responsible for work that had occurred before he issued the Construction Certificate, even though such work would be illegal. The certifier was not responsible for work he presumably knew nothing about and he was not required to check the situation before issuing the Construction Certificate.

I pointed out that some of the offences continued after the issue of the Certificate without any action from the certifier. The Director failed to respond on the matter or to explain why the certifier was reprimanded when all of my allegations were dismissed.

It is highly unsatisfactory that it is left to the community to supervise work done before issue of the CC and that its allegations are not taken seriously in the final analysis.

In the later stages of construction it was necessary for us to ensure that action was taken to prevent stormwater flooding of the townhouse garages because of failure to conform to the plans. There was also extensive failure to provide the scheduled screening trees along our rear boundary. I had to write many letters to Council. Court Orders were issued to correct the breaches, but the screening along half of our boundary was never installed and the plantings along the other half are not as scheduled. We have had to plant our own screening.

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The same builder/developer was involved in a residential flat development a little further along the street. After a month of work at the site, I contacted Council. Another emergency stop work was declared. Charges were laid, including dangerous excavation, damage to trees, inadequate sediment controls, illegal construction.

Some 5 or 6 convictions were obtained at Local Court. As well, the construction had been carried out without the appointment of a certifier.

An interesting situation at the Court was that Council's main witness (and, I believe, the only witness) did not attend. I was asked by the solicitor to fill in for the witness. Until then the builder had pleaded not guilty on all charges. He changed his plea to guilty. The compliance officer who was to be Council's witness was later found guilty of corruption by ICAC on unrelated matters.

One of the biggest items of contention at this site was the excessive Floor Space Ratio because of the extensive projection of the basement car park, both above ground and outside the building footprint. Under these circumstances, a large part of the basement could be declared an additional storey. I maintain that the FSR is excessive even without the additional basement floor area.

The Manager Development Services had claimed that there was no excessive projection of the basement, but during a special meeting that was called after complaints I raised at Council meeting, he had to admit, in front of the Lord Mayor and two other Councillors, that he had been mistaken.

Another controversial matter is Council's failure to supply me with a copy of an asbestos disposal receipt I had requested. Council had apparently accepted this receipt even though the origin of the asbestos had been blotted out. Either that, or the receipt had been tampered with after Council had obtained it. I had seen the receipt during a perusal of Council's files. A later perusal showed that the receipt had disappeared.

Also :- Following my complaints that trees had been illegally removed, the Manager of Compliance tried to justify the removal by using plans that were not authorised in the Notice of Determination and approved by Council. One of the trees was a street tree which Council had protected by two conditions of consent. Even so, Council then found approx 10 reasons to remove the tree. It scheduled the tree for replacement and told me that a work order was in place for the job. 5 years later, the tree has still not been replaced.

My numerous letters on these and other issues resulted in the Manager Development Services declaring that no further information will be supplied to me. He also applied the ban to the development site adjoining our property. Such unfair decisions became a pattern for concerns I raised about subsequent development projects.

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At another development site Council conducted legal proceedings in the Land and Environment Court following an appeal by the applicant over Council's deemed refusal. The project was for a Child Care Centre.

The main issues were lack of safety for mothers and children in the basement car park, traffic and parking problems and absence of a ramp or lift from the basement to the ground floor.

The objectors had complained about all of these issues and several others, but the only one listed by Council as a contention at Court was traffic and parking. Council provided no statistics at Court. It was very much a token contention.

I wrote several letters to Council and also raised the matters at Council meeting public forum. I argued that Council did very little to support the objectors at the Court hearing. I pointed out that :-

- a. The Court said that Council's contentions were limited.
- b. The Court also said that Council made no responses on whether or not the omission of the pedestrian ramp would warrant refusal of the application.
- c. The Court asked Council why it did not support Child Care Centres in cul de sacs. Council's only response was that the matter had been raised by a Councillor at a Council meeting. Council's only representative at the hearing, an assessment officer, obviously did not know the answer.
- d. Council did not list safety for mothers and children as a contention, yet the Court found that a safety walkway was essential.
- e. Council's "considered opinion" was that the ramp could be omitted because the safety walkway was to be provided. The safety walkway has nothing to do with the ramp issue.
- f. The Manager Development Services said that the DCP can be disregarded in the Court proceedings, but the Commissioner said that he must regard the DCP as part of his consideration of the application.
- g. Council still fails to explain how the DCP can be considered to be a flexible document in those areas where it states that it must be followed.

These are only some of the issues that Council has failed to address.

An investigation was set up by Council into its handling of the Court proceedings and into the decisions reached. I waited 10 weeks for the report on this internal investigation and had to complain again at public forum.

When the report finally arrived I was not surprised to find that all my concerns had been rejected, despite the substantiations I had supplied. However, I had expected that after the very long delay some effort would have been made to at least refer to my specific concerns, but there was no mention of any of them. I regard the response as an insult.

As with the other two projects, Council has closed off further consideration of the issues.

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I draw attention to another development project because it was here that Council was appointed as certifier and therefore had a greater responsibility. It was a multi unit housing development.

The most condemning evidence against Council was that it issued construction approval without first obtaining essential documentation from the applicant, the most significant being the Construction Management Programme, which outlines procedures to be followed on safeguarding public and private safety, property and amenity. It covers other matters such as method of informing neighbours of construction stages, construction zones, excavation procedure, safety hoardings.

Council claims to have introduced closer supervision by Management to prevent the recurrence of such oversights, but since then there have been other cases of Council's acceptance of unsatisfactory or missing documents.

Indications are that Council no longer requires Construction Management Plans following the embarrassments it has suffered through its negligence in this area. My inquiries on the matter remain unanswered.

During construction a public walkway which runs along the side boundary of the site was barricaded off by the builder. The walkway was closed off for about a fortnight. Council appears to have known nothing about this inconvenience to the public until I contacted it. It claims to have issued a penalty, but this has not been confirmed. There have been conflicting opinions from Council as to whether or not a permit had been issued for closure of the walkway.

Council decided that a safety hoarding was necessary along the walkway. This would have been either to protect the public from falling bricks during bricklaying just over a metre from the walkway and two storeys above it, or else to safeguard the public from excavation under the walkway. However, by the time approval for the hoarding had been granted by Council, the dangerous work had been completed. None of us remember seeing the hoarding, as described.

The hoarding rules state that no work must start until the hoardings are in place.

The CMP states that excavation procedures are to be verified by a qualified engineer and that proposed protection methods be provided for adjoining Council and private property. No such procedures appear to have been followed for the excavation under the public walkway, which also resulted in damage to the adjoining private fence. As explained, Council failed to procure the CMP.

A very blatant disregard for consent conditions and approved plans occurred in Council's issue of the Occupation Certificate. I had given Council prior knowledge of massive breaches of the Landscape Plan. They included:-

- a. Substitution of native grass for about 60 large lilly pillies, tree ferns and water gums.
- b. Elimination of 8 turfed court yards by paving, also eliminating about 80 plants and further reducing soft soil areas.
- c. Adding 8 new courtyards, a long dominating fence, eliminating communal areas and further soft soil.
- d. Deletion of 4 water gums on the footpath which were meant to enhance streetscape.

Altogether, I outlined 15 breaches of the Plan.

The landscape inspector agreed with me on most of my claims and decided that the landscaping "is not considered complying". However, his later, final report contains no details on what was done to make him

change his mind. His report comprises one word : 'Passed'. There is also no recognition of the fact that the landscape officer had found additional breaches of the Plan. He ignored these, too, in his final report.

I am expected to believe that all these breaches are "generally consistent " with the Plan !

My inquiries also revealed that there had been a building realignment. This should require approval under Section 96 of the Local Government Act and also notification to the public. No such procedure was followed. Council has failed to comment.

As well, Council allowed the removal of 14 windows which, I claim, had been included for articulation and natural lighting. This removal should also require Section 96 application, but Council claimed that this is not necessary when the matter has been considered at Construction Certificate stage. I have asked for verification that this is what had occurred. Documents I have looked at show that the matter was not considered at this stage and Council has not verified its claim.

My other reason for asking for verification is that Council is confronted with the embarrassing fact that irregularities have already occurred over its issue of the Construction Certificate. I am trying to determine just how far these irregularities extend.

There are other anomalies on this matter :-

- a. Council is applying the Building Code of Australia to the rear building but not to the front building where the window removal was more extensive.
- b. Why did the Manager Development Services say that the issues will need to be resolved prior to issue of the Occupation Certificate if it had already been resolved during Construction Certificate stage? I would especially like an answer to this but I am not surprised that none has been provided.
- c. Council has not responded to my request for details of other sites where it has approved windows without sprinklers within 3 metres of a side boundary. I am sure it has approved many.

I have made comparisons with Council's role as certifier for this site with that of a private certifier at another site (not one I have already referred to). On each occasion I provided photographic evidence of unauthorised work on a public holiday and of improper use of Council's footpath for storage of building materials and for unauthorised construction procedures. Council claimed that at the privately certified site it issued penalties for working on the public holiday and for the footpath obstruction. But at the site where it was fully responsible it did nothing about the identical breaches.

My efforts in the face of lack of response resulted in a commitment from Council to carry out another investigation. This time it would be a "detailed investigation". This time, and once again, no reference was made to my concerns, no reasons given, no supporting documentation, just a statement that Council has nothing more to say.

Once again Council has closed off the opportunity to resolve the issues.

I am convinced that Council's supervision of this site shows not only incompetence, neglect, contempt for the public interest, but also bias towards the developer.

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The only other development project I will refer to adjoins the townhouse development where I first became aware of all the failings of the regulatory processes, 7 years ago. I would like to consider how far we have come in that time.

The project is for a dual occupancy. Council has not yet reached its decision on the application. About 22 different objections were lodged. A site meeting was held. It was not until then that we found that changes to the plans were proposed. We objected to the failure to notify the public. Council later wrote to the objectors and exhibited what were supposed to be amended plans. The plans were not amended; they were the original ones. The amendments were meant to solve the problem of invasion of privacy by deleting windows, raising windows and deleting balconies.

As well, other changes had been made to the Landscape Plan and, we believe, there are changes affecting Floor Space Ratio. None of these details have been supplied to us. We strongly objected to the fact that Council expects us to comment on entirely irrelevant plans and plans that have not been provided to us. We have asked for re-notification and re-exhibition of the plans.

Another key issue is that Council accepted the development application form for the project even though there were many omissions from it. eg, The Waste Management Plan shows no details of asbestos removal. A large amount will need to be removed. So, despite its claims that it has put in place procedures to prevent the recurrence of the negligence that occurred at the other site I have referred to (and which happened approx 2 years ago), Council still fails to live up to the public's expectations. This is also despite the fact that the CEO has told me that he is keen to promote public confidence in Council.

Not much has been achieved in the past 7 years.

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I have attended most Council meetings in the past 7 years. I have had to write well over a hundred letters to Council, not just because of the extent of my concerns, but also because most of the letters I receive from Council are so unacceptable and open to criticism that they require further explanation , and especially substantiation.

During that time I have had to make submissions at public forum because of failure to obtain adequate responses through other channels. On two occasions I have obtained the assistance of the NSW Ombudsman, who has helped me obtain long overdue responses. I am currently compiling a lengthy update to him, but I am aware that he has limited resources and limitations on his ability to intervene in Council's decision making. Council appears to be taking full advantage of these situations.

The Ombudsman has told me that he expects matters to be resolved between parties. I believe that I have been very patient with Council and that all the claims I have made are completely justified. The problem, as I see it , is Council's lack of transparency and integrity, quite apart from inefficiency and indications of bias.

The Ombudsman, himself, has recently said that he is concerned about the lack of integrity in government departments and agencies. I believe this comment is appropriate to the situations I have described.

I also believe that boosting of the Ombudsman's resources and powers should be considered in this "strengthening of Australia's democracy" process.

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There have been two occasions when the public has been under the threat of being prevented from inquiring about development applications at public forum. Currently , public participation at Council meeting is under review, with a Workshop being set up. I have sent in my strong objections to any restrictions on the public’s opportunity to express its concerns at public forum and anxiously await the outcomes of the Workshop and Council’s final decision. Any such restrictions would be contrary to the principles of favouring popular rights and upholding the interests of the common people.

I am very conscious of Council’s efforts to place restrictions on complainants. An example of this occurred when the ex Lord Mayor declared me out of order with my questions at public forum. I was simply asking when I would be receiving the long overdue report on Council’s investigation into its decision making. I was also declared out of order when I asked why it was that alleged Code of Conduct breaches by Council staff are treated with confidentiality while similar allegations about Councillors are not. The Lord Mayor’s claim that my question breached confidentiality rules was disproven when the Chief Executive Officer supplied the information to me shortly afterwards, with no apparent breach of confidentiality. On the other hand, if the Lord Mayor was correct, the CEO should never have released the information to me. I am amazed at the inconsistencies displayed at this very high level of Council.

At the time, I was following up on the Ombudsman’s suggestion to me that I had reasons to pursue my allegation that one of the Managers had breached the Code of Conduct. I had previously expressed my dissatisfactions with the Manager’s decisions on abovementioned development projects. I raised the matter at public forum because Council had not updated me on the progress of my allegation. At no stage did I ask for, or expect, to be supplied with confidential information. I am sure that had I not made this approach I would not have been notified of the outcomes of my allegation

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Council recently put forward proposals to make changes to its Compliments and Complaints Policy. I have ample evidence to show that Council does not conform to the Policy in areas such as acknowledgement of complaints, abiding by response time frames, reporting of statistical information to the Council body, “capturing” of complaints. There have been times when I have clearly labelled my letters as “Complaint” or “Formal Complaint”, but the letters have either been ignored or otherwise not treated according to the provisions of the Policy.

There is no doubt that the Policy needs to be changed to remove the confusions and apparent contradictions that are inevitably to the disadvantage of the public. There is particular confusion over what is a complaint and what is not a complaint.

Council proposed to change the definition of a complaint from an expression of dissatisfaction with a decision to an expression of dissatisfaction with the outcomes of a decision. This would mean that complaints would not be accepted until adverse outcomes have become apparent or after it is too late to prevent, for example, personal injury or damage to public or private property or amenity. The public would have no opportunity to complain about potential disadvantages.

One of our objections to the Policy was that it accepts compliments about development applications, but not complaints about them. This is discrimination.

We were able to have the proposed changes deferred and to call for wider ranging changes. Once again I had to use public forum and on this occasion, to obtain the assistance of an independent Councillor who has actively promoted the public interest. Another Workshop has been set up on the Policy. I am very sure

that had I not raised the matter, these very limited and unsatisfactory changes would have been approved by Council and, most likely, without discussion.

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I hope I have shown, above, that Council falls far short of abiding by at least two of its slogans :- 1. "Our community is the reason we exist".

2. "Integrity: We will ensure that the highest ethical standards in decision making and service delivery are maintained".

ELECTORAL MATTERS AND OTHER ISSUES

Consideration could be given to the following, in the public interest:-

1. Funding of campaigns by political parties and corporate bodies reduces the level of commitment to the general public. Candidates should show that they have the capability to run local fund raising and , above all, to become involved with their constituents.
2. Pseudo independents manipulate the poll. In the previous election, a popular Councillor gave up his major party affiliation, became an "independent", but continued to vote with the party he had supposedly left and at the same time worked in the office of the MP for the major party. His "moving aside" allowed an additional major party candidate to be elected.
3. Ignorance of the election process on the part of voters, through language difficulties, lack of instruction , etc, could detrimentally affect the qualities of the elected representatives..
4. Inadequate citizenship standards, enrolment procedures, proof of identity, etc, could have the same result.
5. Voting 1 above the line can produce disinterest in the poll or is the result of disinterest. It can also lead to the manipulation of uninformed and ignorant electors.
6. Candidates should be required to outline what they have done for the electorate or what they propose to do, what their qualifications are. This what happens in elections for company directors.
7. Candidates should be required to spend a specified amount of time door knocking and making themselves available at shopping centres, etc and at polling stations.
8. It is more important for candidates from major parties to meet the people instead of them believing there is no need to.
9. Party politics in local government should be discouraged.
10. Successful candidates should make themselves more accessible, at specified times.
11. The number of Councillors should be reduced , considering that:-
 - a. Attendance by Councillors at site meetings is poor.
 - b. An increasing number of DA decisions are made without discussion, outside the chamber and outside public scrutiny.
 - c. There are increasing salary and catering costs at a time when Council debts are high, and increasing.
 - d. Councillors seem to have misguided confidence in staff assessment and compliance officers and, in general, leave the decisions to them.
12. How to vote handouts at polling stations should occur only on request, to avoid wastage of resources. It would be less to the advantage of the major parties and would encourage the candidates to build up higher profiles in their electorates.

13. One of the best ways to ensure that electoral laws are easily understood is for the candidates to explain them to the electors. It may earn them votes. As it is, it seems that it is to the advantage of the candidates that the electors remain in ignorance.
The same strategy should be used to reduce unintended informal voting.
14. The franchise in local elections should be given only to property owners and ratepayers. These are the ones who have most to lose, or gain, particularly on developmental issues.
15. Candidates in local elections should be residents or ratepayers in the local area and all their affiliations, ownership of property, etc, should be open to public scrutiny.
16. Public funding of registered parties should be removed.
17. Minutes of meetings should show how the individual Councillors voted.
18. There may be reasons for removing the franchise from those who have dual citizenship or who are living overseas for extended periods.

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Thank you for the opportunity to comment on these very important issues. I would be happy to supply any supporting information. My final comment is that I believe the most important ingredient in "strengthening Australia's democracy" is for all government institutions and judicial systems to strictly conform to democratic principles .

Bruce Berry

