

NCDC design and siting decisions

A resident action group complained to the Ombudsman in late August this year about the National Capital Development Commission's (NCDC) approval of a plan by the Uniting Church to build a manse and a group of 16 one and two storey self care units for persons in the 55 year and over age group on a site in Narrabundah known as 'Rocky Knoll'. The lease of the site had been given to the former Presbyterian Church in the late 1950s under the Leases (Special Purposes) Ordinance, specifically for the construction of a church, manse and church hall. Only the hall had been constructed. The residents were concerned that the site, the highest point in the immediate neighbourhood and in use for some years as a reserve, would be covered by medium density housing and not the facilities for which it had been made available to the Church.

In his draft report to the NCDC, the Ombudsman concluded tentatively that the NCDC had been wrong in giving approval to the development without consulting the community on what was, to all intents and purposes, a change of land use. The NCDC responded, maintaining that the proposed self care units were indeed aged persons' accommodation within the meaning of its 1985 draft policy, which permits their construction on land reserved for community facilities - as was the Rocky Knoll site.

The Ombudsman had not decided what further action to take when the complainants initiated legal proceedings in the Federal Court. Under section 6(2) of the Ombudsman Act the Ombudsman is constrained from investigating an action that has been taken before a court or tribunal constituted under an enactment, unless he finds special reasons to justify him doing so. In this case he therefore decided to cease investigation.

The complaint highlighted the importance of a policy question which he was already investigating as a result of previous complaints: the lack of an appeals mechanism which could be used by third parties aggrieved by design and siting approvals. The question had also been raised in an earlier (1982) report by the Administrative Review Council.

- - - - -
A D M I N I S T R A T I V E L A W W A T C H
- - - - -

Administrative Decisions (Judicial Review) Amendment Bill

This Bill lapsed on the dissolution of Parliament prior to the recent federal elections. The government has re-introduced it in the Senate during the present Budget Sittings and it has

been referred back to the Senate Standing Committee on Constitutional and Legal Affairs.

The Bill has 3 main purposes:

(1) to strengthen the provisions in the AD(JR) Act under which the Federal Court has a discretion to refuse to grant an application for review where another law makes provision for review of the disputed decision by a tribunal, authority or person;

(2) to discourage the disruption of administrative proceedings by narrowing the scope for applications under the AD(JR) Act during the course of the proceedings, where there is legislative provision for the review of the disputed decision at the conclusion of the proceedings; and

(3) to make specific provision for the Federal Court's general discretion under the Act to refuse to entertain an application.

In the formulation of the Bill, detailed consideration was given to the recommendations made by the Council in its report, Review of the Administrative Decisions (Judicial Review) Act 1977 - Stage One. Detailed comment on the Bill was made at [1987] Admin Review 2.

R E C E N T P U B L I C A T I O N S

Lord Ackner

'Judicial review - judicial creativity at its best', in Law Council of Australia, 1987: Winds of change: 24th Australian Legal Convention papers, Perth, 20-25 September

Aitken, L.J.W.

'The exclusion of the operation of Section 9 of the Administrative Decisions (Judicial Review) Act' (series of 2 parts), Australian Current Law, September 1986:36063-7 October 1986:36069-71

Allars, M.N.

'"La belle dame sans merci/hath thee in thrall": the judicial paradigm and tribunal procedure', paper presented at AULSA Conference, Monash University, 24-27 August 1987

Aronson, Mark and Nicola Franklin

Review of administrative action, Sydney: The Law Book Company, 1987