



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

**Draft Variation to the Territory Plan No. 229
Supportive Housing and Adaptable Housing
Provisions and Other Minor Amendments**

JULY 2005

Report 13

Committee membership

Chair Mick Gentleman MLA

Deputy Chair Zed Seselja MLA

Mary Porter AM MLA

Secretary: Hanna Jaireth

Administration: Linzi Lamont

Resolution of appointment

On 7 December 2004 the ACT Legislative Assembly agreed to establish general purpose standing committees as follows:

- (1) The following general purpose standing committees be established and each committee to inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community: ...

(e) a Standing Committee on Planning and Environment to examine matters related to planning, public works and land management, conservation and heritage, transport services, and environment and ecological sustainability.
....¹

The Assembly also agreed that if the Assembly is not sitting when the Standing Committee on Planning and Environment has completed consideration of a report on draft plan variations or draft plans of management referred to the Committee by the Minister under the *Land (Planning and Environment) Act 1991*, the Committee may send its report to the Speaker, or, in the absence of the Speaker to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.²

Terms of reference

Section 25 of the Land (Planning and Environment) Act 1991 (ACT) states:

The Minister shall, within 28 days of receiving a draft plan variation under section 24, refer —

- (a) the draft plan variation; and
- (b) the documents referred to in section 24(1) that relate to the draft plan variation;

to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan to the Legislative Assembly.

¹ Legislative Assembly of the ACT, *Minutes of Proceedings*, No. 2–7 December 2004, pp.12–16.

² Legislative Assembly of the ACT, *Minutes of Proceedings*, No. 2–7 December 2004, pp.12–16.

Preface

Both Federal and ACT law and policy governs planning in the ACT. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth)³ establishes the National Capital Authority, which prepares and administers the National Capital Plan. The Act also enables the Legislative Assembly to establish a statutory planning authority – now the Planning and Land Authority⁴ – to develop and implement the Territory Plan. The *Land (Planning and Environment) Act 1991* (ACT)⁵ (the Act) requires the Territory Plan to set out the planning principles and policies for giving effect to its object,⁶ which is:

to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an ecologically sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.⁷

The Plan includes both a written statement and a map. The written statement contains general planning principles (Part A), specific land use policies (Part B), overlay provisions (Part C) and definitions of terms (Part D). The Territory Plan map shows which land use policies and overlays in the written statement apply to particular sections of land in the Territory. The Territory Plan is developed and implemented taking account of other strategic ACT Government policy documents such as *The Canberra Plan* and *People Place Prosperity: A Policy for Sustainability in the ACT*.⁸

Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. The Planning and Land Authority prepares these for stakeholder comment. There can be a number of versions of a draft variation depending on the consultation program.

The Minister is required by the Act to refer each draft variation, within 28 days of receiving it, to an appropriate committee of the Assembly – currently the Standing Committee on Planning and Environment – for consideration and report.⁹

³ Accessible at <<http://scale.law.gov.au/html/pasteact/0/160/top.htm>>.

⁴ Established by the *Planning and Land Act 2002* (ACT).

⁵ Accessible at <<http://www.legislation.act.gov.au/a/1991-100/current/pdf/1991-100.pdf>>.

⁶ Land (Planning and Environment) Act 1991, sub-section 7(2)).

⁷ Land (Planning and Environment) Act 1991, sub-section 7(1).

⁸ Accessible at <<http://www.cmd.act.gov.au/canberraplan/>> and <<http://www.sustainability.act.gov.au/policy.html>>.

⁹ Land (Planning and Environment) Act 1991, section 25.

The Minister is required to have regard to the Committee's recommendations before approving the proposed variation and tabling it in the Assembly (see below), or returning it to the Planning and Land Authority with written directions for further action.¹⁰

The Territory, the Executive, a Minister or a Territory authority must not do or approve anything that is inconsistent with the Territory Plan, or the proposed draft variation, in relation to land that is subject to a draft variation, once the draft variation has been notified for public consultation under the Legislation Act and until it commences operation, is disallowed by the Legislative Assembly, or is withdrawn.¹¹

Following the Committee's tabling of its report in the Legislative Assembly, the Minister must take the findings of the committee into account before making his decision in relation to the draft plan variation.¹² If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.¹³ Unless wholly or partially disallowed by the Assembly within five sitting days, the variation will commence on the date nominated by the Minister.

¹⁰ Land (Planning and Environment) Act 1991, paragraphs 26(1)(a) and (b), sub-section 26(2).

¹¹ Land (Planning and Environment) Act 1991, section 9.

¹² Land (Planning and Environment) Act 1991, sub-section 26(2).

¹³ Land (Planning and Environment) Act 1991, section 29.

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

- 1.20 The Committee recommends that the Minister for Planning require the Planning and Land Authority, in consultation with the Department of Disability, Housing and Community Services, to consider and respond to the concerns raised by ACTCOSS and ACT Shelter regarding the proposed definitions for ‘approved provider’ and ‘supportive housing’ in the proposed variation.
- 1.21 The Committee requests that the Minister report to the Assembly on the results of that consideration when tabling the Recommended Final Variation in the Assembly.

RECOMMENDATION 2

- 1.22 The Committee recommends that the Planning and Land Authority consider whether references to ‘accessible housing standards’¹⁴ should be replaced with ‘accessible housing standard AS 1428’, as suggested by Mr Eric Martin of Eric Martin & Associates.
- 1.23 The Committee requests that the Minister report to the Assembly on the results of that consideration when tabling the Recommended Final Variation in the Assembly.

RECOMMENDATION 3

- 1.24 The Committee recommends that the word ‘objectives’ in the proposed amendment to the Territory Plan for Area A11 be replaced with ‘controls’. This would then correctly refer to the currently un-numbered controls in the Territory Plan, Part B1, p.16 rather than the single objective in that area specific policy.

¹⁴ In the 3rd dot point in the Recommended Final Variation p.6 and at paragraph 3.1(e), p.10

INTRODUCTION

- 1.1 This draft variation proposes amendments to the Territory Plan Written Statement to tighten its supportive and adaptable housing provisions to ensure that community facility land remains in that land use and is not separately titled under unit title arrangements. This variation responds in part to the proposed unit titling in 2003 of an aged care housing development on the former St Anne's Convent site in Campbell.
- 1.2 This proposed variation amends the existing land use controls for 'Supportive Housing and Residential Care Accommodation' in Part B4 Community Facility Land Use Policies in the Territory Plan.¹⁵ Proponents will be required to demonstrate through a community needs assessment that there is sufficient land for community uses in the locality to meet anticipated community needs, and that the facility will be owned and operated by an 'approved provider' as defined (discussed below). If there is an existing community use on the site, the proponent must demonstrate that the supportive housing facility is ancillary to the primary community use. Only elderly persons and/or persons with special housing needs for reasons such as shelter support, infirmity or disability, and their bona fide carers, would be permitted to sub-lease individual dwellings or rooms in the facility.
- 1.3 This proposed variation inserts new definitions for the terms 'approved provider' of supportive housing and residential care accommodation, 'supportive housing' and 'residential care accommodation', as follows –
- '**Approved provider** includes the Territory Government and its agencies, an organisation that exists for the purpose of, or is receiving government funding to, provide care and accommodation or supported accommodation to persons requiring specialist care, support and accommodation due to, but not exclusively, age or disability.'¹⁶
- '**Supportive housing** (part of the definition of residential use) means the use of land to provide short or long term accommodation for persons in need of shelter support, supervision, treatment or assisted living services such as counselling domestic assistance and personal care. Services must be

¹⁵ Territory Plan Part B4: Community Facility Land Use Policies pp.4–6 as proposed at pp.9–10 of the *Recommended Final Variation to the Territory Plan No. 229*.

¹⁶ ACT Planning and Land Authority, 'Recommended Final Variation: Variation to the Territory Plan No 229 – Supportive Housing and Adaptable Housing Provisions and Other Minor Amendments', May 2005, p.10.

delivered on site,(sic) management and preparation may be carried out on site or elsewhere. Housing may be self-contained or comprise shared facilities e.g. for cooking, dining or laundry. Includes special dwelling, special care hostel, aged care, community housing.'

'Residential care accommodation (part of the definition of residential use) means the use of land by an agency or organisation that exists for the purpose of providing accommodation, care and services for persons requiring support, which is larger than dwelling size. Supervision, treatment and specialist care is provided by on-site staff. Services may include the provision of meals, domestic services and personal care and must be delivered on-site,(sic) management and preparation may be carried out on site or elsewhere. Includes hospice, nursing home, aged care, special dwelling, rehabilitation facility.'

- 1.4 If approved, the proposed variation will require that 10% of the community facility dwellings be designed to meet the relevant Australian Standard or building code for Access and Mobility. The development must also be designed in accordance with the relevant code in Appendix III of the Territory Plan. The subdivision of dwelling units in a supportive housing facility or residential housing facility, including unit title subdivision, will not be approved.
- 1.5 The proposed variation also inserts performance criteria and acceptable standards for adaptable housing in Parts B2A–B2E of the Territory Plan, which provides land use policies for commercial areas (i.e. Civic Centre; town, group, and local centres; and corridor and office sites) and in Part B8 – entertainment, accommodation and leisure land use policy. A new performance criterion is that residential development is to be easily adaptable to suit the needs of people with disabilities and Canberra's ageing population. The acceptable standard is that 10% of the dwellings of any multi-unit housing development consisting of 10 or more dwellings must be designed to meet the relevant Australian Standard or building code for adaptable housing, or other guidelines adopted by the Authority for adaptable housing. This proposed variation would transfer what is currently a non-statutory guideline into the Territory Plan, thereby giving it statutory effect.
- 1.6 Several minor amendments to the Territory Plan Written Statement are also proposed, including –
 - replacing the existing Schedule 1 in Part B4 Community Facility Land Use Policies in the Territory Plan which is to include 'community use' and 'temporary' and 'minor' use.

- replacing 'Part IV' with 'Part 4'
- omitting from para 3.2(a) an incorrect reference to 'indoor recreation facility'¹⁷
- replacing in the definition of child care centre the words 'which is registered under the Children Services Act 1986' with 'which is licensed under the relevant Territory legislation'¹⁸
- replacing para. 3.6(a)(ii) with 'all dwellings are designed to meet the relevant Australian standards or building code for adaptable housing.' [This inserts 'building code' into the sub-paragraph.]¹⁹
- replacing para. 3.6(b)(iii) with a new paragraph that is similar except that it omits reference to the Heritage Register and exempts 'Community activity centre or Health facility'²⁰
- replacing the heading Area A11: Adaptable Housing with 'Area A11: Adaptable Housing – Block 2 and 3 Section 124 Narrabundah' with a renumbering of objectives as (b) and (c),²¹ and
- inserting a new clause '3.11 Adaptable Housing' which requires that 10% of any multi-unit housing development with 10 or more dwellings to be designed to meet the relevant Australian Standard or building code for adaptable housing or other guidelines adopted by the Authority for adaptable housing.²²

1.7 The proposed variation also makes various minor amendments to Part B1 Residential area specific policies. These include:

- replacing various references to clause 2.2 with 'clause 3.4', concerning the number of storeys permitted in residential areas ²³
- replacing references to 'clause 2.2' with 'clauses 3.3' in various section 4 area specific policies²⁴
- replacing references to 'clause 2.11' with 'clause 3.1 and 3.2' in various section 4 area specific policies²⁵
- replacing 'clause 2.10' with 'clause 3.1' and replace 'clause 2.11' with 'clause 3.2' in Section 4 Area Specific Policy for Area B8²⁶

¹⁷ Part B4, p.5

¹⁸ Part D definition of terms, p.3

¹⁹ Part B1 Residential Land Use Policies, p.9

²⁰ Part B1 Residential Land Use Policies, p.9

²¹ Part B1 Residential Land Use Policies, p.16

²² Part B1 Residential Land Use Policies, p.11

²³ Part B1 Residential Land Use Policies, pp.19, 20, 25

²⁴ Part B1 Residential Land Use Policies, pp.16, 17, 18, 19

²⁵ Part B1 Residential Land Use Policies, pp.5, 6

- replacing 'clause 2.10' with 'clause 3.1a' in Section 4 Area Specific Policy for Area B10²⁷

Consultation comments – ACT Planning and Land Authority

- 1.8 In accordance with the *Land (Planning and Environment) Act 1991* (ACT), the ACT Planning and Land Authority sought and considered the views of the National Capital Authority, the ACT Heritage Council and the Conservator of Flora and Fauna. The National Capital Authority advised that the draft variation was not inconsistent with the National Capital Plan. The ACT Heritage Council advised that they had no concerns about the proposed variation. The Conservator of Flora and Fauna supported the proposal.
- 1.9 Pursuant to regulations under the *Planning and Land ACT 2003* (ACT), the Authority is also required to seek the advice of the Planning and Land Council on significant policy, planning or community issues, including draft variations. On 30 July 2003 the Council advised the Authority that as a general principle the integrity of community land under leasehold administration should be protected. The Council supported the proposed minor amendment to the definition of supportive housing in the Territory Plan. The Council also supported the proposed variation to the Territory Plan requiring that a minimum of 10% of multi-unit developments be Adaptable Housing in A10 Residential Core Areas and Town, Group and Local Centres.²⁸
- 1.10 The ACT Planning and Land Authority released DV229 for public comment on 24 July 2004 until 2 September 2004. The main points made in the six written submissions to the Authority, and the Authority's response, are summarised in Table 1.

²⁶ Part B1 Residential Land Use Policies, p.19

²⁷ Part B1 Residential Land Use Policies, p.20

²⁸ Minutes, ACT Planning and Land Council Meeting No 2, 30 July 2003, p.2 accessible at <<http://www.planninglandcouncil.act.gov.au/documents/MeetingMinutes30July2003.pdf>>. The new performance controls concerning adaptable housing are not proposed to apply to Residential Core Areas but will to Part B2E – Corridors and Office Sites.

Table 1: Summary of issues and ACT Planning and Land Authority responses²⁹

Stakeholder comment	Response by the ACT Planning and Land Authority
Community Housing Canberra (CHC) welcomed the proposed policy change, including the unit titling restriction, for people with disabilities. CHC and Housing ACT also supported the adaptable housing provisions.	Noted
Several submissions opposed restrictions on unit titling because it limits returns on investment and may create difficulties for raising finance.	Agreed in part, but the Authority aims to ensure that ongoing support services are provided. Dedicated service providers are best placed to own and run community facilities. Unit titling will be permitted where unit titled residential uses are permitted.
Supportive housing is not being built in many residential areas in the ACT, in part because of Variation No 200, which restricts unit titling to core areas, and tree protection legislation.	Variation No 200 (A10 (Residential Core) Area Specific Policy) is consistent with the Spatial Plan and Sustainable Transport Plan. There is no evidence these policies are restricting residential renewal and redevelopment. Small-scale supportive housing can be provided in residential areas.
Unit titling should be available in retirement complexes.	The definition of retirement complex in the Territory Plan requires a nursing home/hostel to be developed in association with self-care units. The terms supportive housing and residential care accommodation have largely replaced retirement complex in the Plan. Two complexes have been unit titled, both located on residential (not community facility) land.

²⁹ ACT Planning and Land Authority, Report on Consultation with Public and Government Agencies, Draft Variation to the Territory Plan No. 229, Annexure 2 to Recommended Final Variation.

Multi-unit housing and apartments are suitable for delivering accommodation for the elderly and people with disabilities.	The provision of ongoing care and support services is a requirement for supportive housing on community facility land, unlike in multi-unit developments and apartments in residential areas, which must comply with the relevant code in Appendix III.
Retirement complexes in the ACT are managed in part by an industry code of practice rather than detailed legislation (e.g. NSW) setting out the rights and responsibilities of residents and aged care providers.	Agreed in part that legislation may be necessary but this DV responds to the immediate need to prevent unit titling for supportive housing on community facility land. The ACT's Retirement Village Code of Practice applies to resident-funded residential retirement village units.
The term 'Territory approved organisation' needs clarification.	A new definition will be included in the Community Facility land use policy for an 'approved provider' of supportive housing on community land.
Housing ACT is concerned that the definition of supportive housing units limits the opportunities for ACT Housing to develop aged persons housing on community facility land use policy land.	Supported housing is not self-care housing. Community facility land is primarily for community uses and facilities with supported housing permitted as an ancillary use.
The Housing Industry Association suggests that adaptable housing should be recorded as such on certificates of occupancy so that investment values are transferable.	Not accepted. The issuance of a Certificate of occupancy follows an access consultant's report on the development application followed by an inspection. The <i>Civil Law (Sale of Residential Property) Act 2003</i> requires everyone selling a property to provide a range of information in the conveyance package.

Committee comments

- 1.11 The Committee notes that while this proposed variation deals with minor and technical amendments to various sections of the Territory Plan it also deals with the important social issue of the provision of supported accommodation to meet the needs of people with disabilities and Canberra's ageing population.

- 1.12 In January 2005 the Canberra Property Owners Association Ltd had expressed support for unit titling on community facility land, which it said, would appeal to small local aged care organisations.³⁰
- 1.13 The Committee discussed DV229 with the Chair of the ACT Law Society Property Law Committee, Michael James, and his colleague Mr John Power. Mr James and Mr Power suggested that unit titling for retirement villages could be advantageous for residents as title could be used as security for loans, unlike sub-lessees' rights. Mr James suggested that if a service provider got into financial difficulties sub-lessees could lose their accommodation. He noted that adaptable housing requirements could add to the construction costs of facilities. Both also suggested that lawyers would prefer to see unit title rights extended, not contracted, and legislation rather than the Territory Plan used to manage the supportive housing sector.
- 1.14 The Committee appreciates the time taken by the Law Society representatives to meet with the Committee and appreciates the view that unit titles can be a very valuable asset. The Committee notes however, that the proposed variation does not prohibit the unit titling of multi-unit housing outside the community facilities land use policy. The Committee agrees with the policy of the proposed variation, that serviced supportive accommodation on community facility land should be required to remain as this, and that private titles would reduce this likelihood.
- 1.15 ACTCOSS and ACT Shelter similarly expressed support for the policy objective underlying DV229 of preventing speculative gain on community land, and the loss of community land to unit developments. They sought clarification of three issues however –
- In relation to the housing facility having to be owned and operated by an approved provider, ACTCOSS and ACT Shelter raised the concern that there are frequently arrangements whereby facilities are owned by one provider and operated by another. They noted, for example, that some Supported Accommodation Assistance Programs (SAAP services) are provided in Territory-owned properties, but managed by community organisations. ACTCOSS and ACT Shelter said they would not support an amendment to the Territory Plan that would prevent such community-government partnerships on community facility land.

³⁰ Letter to the Committee from CEO Canberra Property Owners Association Ltd, Mr Peter Conway, dated 4 January 2005.

- Secondly, they said that the new definition of ‘approved provider’ in Part D (p.16), should not be limited to organisations that provide both ‘care and accommodation’, given that the government had previously stated a position in response to the Gallop Inquiry that accommodation and support services should be separately provided. The separate provision of care and accommodation services should not be prevented, in their view.
- Finally, the new definitions in Part D of both supportive housing and residential care accommodation specify that ‘services must be delivered on-site’. ACTCOSS and ACT Shelter noted that a number of current services provide supported accommodation through remote service delivery. For example, SAAP services often have stand-alone properties where tenants access services such as group activities, individual counselling, or referral services at an off-site location. There can be off-site support for sustaining tenancies. They said the current definition could potentially prevent important service-providers from accessing community facility land, as well as impede effective and innovative service provision models.

1.16 The Committee thanks ACTCOSS and ACT Shelter for consulting with their members and staff about this proposed variation, and for providing timely feedback to the Committee. Members consider that the concerns ACTCOSS and ACT Shelter have raised about the potential limitations in the proposed definitions for ‘approved provider’ and ‘supportive housing’ are persuasive, and should be assessed further by the Planning and Land Authority, in consultation with the Department of Disability, Housing and Community Services.

1.17 Eric Martin, of Eric Martin & Associates, also responded to the Committee’s request for comment. Mr Martin suggested that references in the Recommended Final Variation to ‘accessible housing standards’³¹ should be replaced, as the relevant Australian Standard (AS 4299) refers to adaptable housing, not accessible housing, and the Building Code does not refer to accessible housing. According to Mr Martin, the concept of ‘accessible housing’ would usually be understood to cover features such as grab rails and fittings adequate for people with limited mobility to enhance their independent living (as described in AS 1428.1 and AS 1428.2). He advised the Committee –

There is currently no Australian Standard for accessible housing and the Building Code does not refer to accessible housing. The standards (AS

³¹ In the 3rd dot point in the Recommended Final Variation p.6 and at paragraph 3.1(e), p.10

4299) refer to adaptable housing. We are currently not aware of any proposed standards being developed for 'accessible housing'

However there is a definition of an accessible housing unit in AS 2499 which states:

1.4.2 Accessible Housing Unit

Housing unit with features already in place to facilitate use by a person with a disability or progressive frailty.

...The use of Adaptable Housing (i.e. AS 4299) and Accessible Standards (i.e. AS 1428) is correct.

It is correct that Class 3 buildings (i.e. motel or similar) do require a percentage of the facilities to be accessible (refer BCA Clause D3.2 and Table D3.2). While the reference to 'accessible housing standards' is not incorrect it is effectively meaningless as none exists which will add confusion.

An option to overcome this is to amend 'accessible housing standards' to read 'accessible standards' which would then refer to AS 1428.

- 1.18 The Committee also notes that there is a proposed amendment purporting to replace the heading 'Area A11: Adaptable Housing' with 'Area A11: Adaptable Housing – Block 2 and 3 Section 124 Narrabundah' and renumber its objectives as (b) and (c).³² This is currently unclear. The ACT Planning Authority confirmed, through the Secretary, that the proposed amendment should refer to 'controls' rather than objectives.
- 1.19 The Committee also notes several typographical errors, such as Town Centre Land Use Policeis Commerical 'B', 'Poicies';³³ and suggests that the definitions for 'approved provider' and 'supportive housing' could be improved with a full-stop after 'on-site' and 'on site' in both.

RECOMMENDATION 1

- 1.20 The Committee recommends that the Minister for Planning require the Planning and Land Authority, in consultation with the Department of Disability, Housing and Community Services, to consider and respond to the concerns raised by ACTCOSS and ACT Shelter regarding the proposed definitions for 'approved provider' and 'supportive housing' in the proposed variation.

³² Territory Plan, Part B1 Residential Land Use Policies, p.16

³³ e.g. Recommended Final Variation p.13, 14.

- 1.21 The Committee requests that the Minister report to the Assembly on the results of that consideration when tabling the Recommended Final Variation in the Assembly.

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- 1.22 The Committee recommends that the Planning and Land Authority consider whether references to 'accessible housing standards'³⁴ should be replaced with 'accessible housing standard AS 1428', as suggested by Mr Eric Martin of Eric Martin & Associates.
- 1.23 The Committee requests that the Minister report to the Assembly on the results of that consideration when tabling the Recommended Final Variation in the Assembly.

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- 1.24 The Committee recommends that the word 'objectives' in the proposed amendment to the Territory Plan for Area A11 be replaced with 'controls'. This would then correctly refer to the currently un-numbered controls in the Territory Plan, Part B1, p.16 rather than the single objective in that area specific policy.

Mick Gentleman
Chair
29 July 2005

³⁴ In the 3rd dot point in the Recommended Final Variation p.6 and at paragraph 3.1(e), p.10