



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PLANNING AND URBAN SERVICES

REPORT NO.76 AUGUST 2001

**DRAFT VARIATION TO THE TERRITORY PLAN NO.155
TERRITORY PLAN REVIEW PART A (GENERAL PRINCIPLES AND
POLICIES)**

Recommendations:

- (1) *The committee recommends that Draft Variation No. 155 Territory Plan Review Part A (General Principles and Policies) be deferred and resubmitted to this committee's successor by the government at the same time as DV125 dealing with the new ACT Code for Residential Development is also submitted.*
- (2) *The committee recommends that Section A3[7] of DV155 be amended to stipulate that PALM must prepare a formal response to the public comment it receives on a proposed Master Plan; that this formal response must be incorporated into the papers forwarded to the Minister; and that PALM inform members of the ACT Assembly, and the relevant planning committee of the Assembly, at the time it prepares a Master Plan—and when it is considering changing a Master Plan.*
- (3) *The committee recommends that each use of a preamble in Part A contained a succinct reference to the fact that the preamble does not form part of the legal policy content of the Plan and is meant to provide useful background and explanatory material.*
- (4) *The committee recommends that the government monitor technological opportunities to improve the integration of the Territory Plan Map (showing landuses) with the 'live' cadastral maps (showing lease boundaries), in order to facilitate the provision of accurate, up-to-date and easily accessible information about land uses and land holdings in the ACT.*

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THE STANDING COMMITTEE ON PLANNING AND URBAN SERVICES

The Standing Committee on Planning and Urban Services was established on 28/4/98 to inquire into and report on planning and lease management, road and transport services, infrastructure and asset management and public utilities purchasing, electricity industry and regulation, construction industry policy, parks and forests, private sector employment inspectorate, building services, environment, heritage and municipal services and any other related matter (*resolution of appointment, as amended on 25/11/99, 7/2/00 and 15/2/01*).

Committee members: Mr Harold Hird MLA (Chair), Mr Dave Rugendyke MLA (Deputy Chair), Mr Simon Corbell MLA

Secretary: Mr Rod Power Office secretary: Ms Judy Moutia.....For further information please contact the secretary on ph: 02 6205-0435 or fax: 02 6205-0432 or email: committees@act.gov.au

Background

1. On 21/11/00 the Minister for Urban Services referred Draft Variation No.155 to the committee for its consideration, in line with s25 and s26 of the *Land (Planning and Environment) Act 1991*.

The Draft Variation

2. The original version of Draft Variation No.155 [DV155] is dated March 2000. As a result of considering submissions from the public, PALM revised the DV. The version that PALM has recommended the Minister adopt, and which is the subject of this report, is dated October 2000.

3. The DV proposes to make changes to the content and structure of Part A of the Territory Plan, and also some changes to the broader structure of the Plan. From PALM's perspective:

the key issues were... that the strategic content of the Territory Plan needed to be more positively expressed... [to reflect] more contemporary policy directions, particularly in terms of sustainability and affordability. There was a view that the Plan was complex and that we should do whatever we could to simplify it....

We need to make reference to some specific initiatives, such as the revitalisation of Civic and the airport project...

There was also the view that the Plan needed to emphasise a more flexible performance-based approach to development controls and assessments...

[Further,] we are proposing in those areas where [lease] boundaries have not been defined by survey to allow them to be adjusted before survey to reflect more recent planning decisions...

[And] there is a reference to the definitions of terms used in the Plan and there is a clarification of the relationship of the Plan to the Heritage Places Register. At the moment, all of these things exist in legislation, but you have to be a bit of a detective to work out how they all fit together....

[In addition,] we are setting out in the Territory Plan the procedures for the planning of defined land...

We [also] propose to bring the material that is currently in a Practice Direction relating to the process for preparing and making master plans into Part A to give it a greater formality than currently exists...

We are also proposing to establish a formal register of planning guidelines through this revision to Part A...¹

Consideration by the committee

4. The committee obtained a copy of, and took into account, eleven submissions by the public that were lodged with PALM in April/May 2000. In relation to its own inquiry, the committee – in December 2000 - placed advertisements in the local media inviting public input to be received by 9 February 2001.

¹ Mr Calnan, PALM Transcript 18/5/01

5. The committee received three submissions from the following persons/organisations: Dr Cooke, Mr Fitzgibbons; and Dr Dickins (on behalf of the North Canberra Community Council Inc.).

6. On 11/5/01 and 18/5/01 the committee conducted public hearings at which Dr Dickins, Mr Fitzgibbons, and PALM officers addressed the committee.

Submissions

7. Dr Cooke submitted that DV raises ‘two serious issues’:

1. DV155 represents a clear attempt to diminish the community’s existing rights and role in planning processes and outcomes... In so doing, DV155 contradicts the strongly expressed views of the recent OECD delegation regarding the essential role of community consensus and involvement in achieving Canberra’s future goal as a site of urban renaissance. For this reason alone, government should shelve any final consideration of DV155 until after the OECD’s forthcoming report has been received and digested by the planning bureaucracy, the private sector and the community, the three partners identified by the OECD as vital for Canberra’s future development.

2. ‘Section Master Plans’ of *Part A3: Plan Administration Policies* is seriously flawed and at odds with good public policy. As it stands, it vastly inflates the discretionary power of PALM and the Minister without providing adequate safeguards in the form of detailed procedures and mechanisms designed to ensure transparency of process and regularity and impartiality of results. It should be withdrawn and completely revised, including an Appendix defining, inter alia, a fixed set of consultative procedures and an appeals mechanism.

If DV155 is accepted unamended, the community’s existing right to participate in planning processes and outcomes will be seriously curtailed while the Minister will be allowed to exercise massive discretionary power at the local level without effective constraints or any rights of appeal.

[Further,] I believe that the Territory Plan should encourage and facilitate the installation of water storage tanks in new areas and, wherever possible, in small redevelopments...

[In addition,] although the cadastral base of the Territory Plan Map does not form part of the Plan, I believe DV155 should include a commitment to regular updates of this cadastral base showing the redeveloped blocks in each residential section. At the moment the Territory Plan Map reflects the situation in residential areas anything up to decades in the past. It is extremely difficult—if not impossible—to gauge the amount and rate of redevelopment in whole suburban areas without an easily accessed source of cadastral information... [PALM needs this information to] adequately ensure that an “orderly process” of change is occurring at the local level, as it is required to do under the current Territory Plan... [and] without such detailed information, how can PALM in the future hope to monitor the “Garden City” qualities of older suburbs, which is supposed to be given “the highest priority” according to DV155 (A2[5.1])²... [Further,] this information... should be made publicly available on the Territory Plan Website, to at least to the LAPACs.³

² Now A2 5.2 in the October 2001 version of DV155

³ Dr Cooke, submission dated 21/5/01

8. Mr Fitzgibbons submitted that:

Master Plans should have much more public participation than that called for in DV155... [which prescribes] a period of “not less than 21 days”. This... [is] insufficient because [it] would not allow the public, and the Standing Committee on Planning and Urban Services, a reasonable opportunity to participate in its drafting, to inspect and review it, consult with others, and prepare comments...

Master Plans have far-reaching planning and legal implications, and certainly should be considered to be “issues requiring comprehensive consultation”...

DV155 would also undermine the authority of the Standing Committee on Planning and Urban Services... DV155 would give the [Planning] Authority exclusive power to determine the type, degree and length of consultation, without regard to the wishes or desires of the committee. Nothing in DV155 requires the Authority to consult with the committee to determine if a possible Assembly committee inquiry should be included in the timeline for consultation...

“Intensification of development”⁴ [is] not supported by... current demographic data... The last reported annual population growth rate was just one half of one percent, which equates to approximately 1650 people...

[The] three-tiered method [of considering land use and development proposals] does not give sufficient importance to quality of life and environment issues.

Part A3, Plan Administration Policies, Section 9, Consideration of Land Use and Development Proposals sets out a three tiered method of weighing the importance of issues in considering development proposals. Section 9.1 is the highest level, saying the Authority *shall not approve* a proposals that would be inconsistent with certain policies and codes. Section 9.2 is the second highest level, saying that the Authority *shall take into consideration* certain matters. Section 9.3 is the lowest level, saying only that the Authority *shall have regard* to other certain matters. The **lowest level of importance** is given is given to public health and safety, access for people with disabilities, environment, air/water/soil quality, flora and wildlife habitats, vegetation retention, noise, traffic and parking, privacy, energy and resources, architectural/historic/aesthetic/scientific/cultural/heritage value, availability of public transport and utility services, etc.

[DV155 has] lax and vague enforcement standards. *A3, Plan Administration Policies, Section 11, Performance-based Assessment* includes language that would make nearly all standards vague, ineffectual and unenforceable... **It would even allow relaxing the criteria used to determine whether a proposal shall be subject to a Mandatory Preliminary Assessment.** *Action 11.1.* renders all “acceptable standards” in codes essentially meaningless. It states: “proposals that do not meet a relevant “acceptable standard” set out under the applicable land use policy in Part B may nevertheless be considered for approval in terms of whether they meet the related performance criterion”.

It begs the question: why have “acceptable standards” at all, if the Authority can waive them at will?... The public, including the building industry, would have no idea what is allowable and what is not allowable...

Section 11.2 give the Authority the power to approve “a minor departure from numerical standards”. It does not define “minor departure” and apparently leaves that up to the discretion of the Authority...

That same section even allows the Authority to depart from numerical standards that are used in determining whether proposals shall be subject to a Mandatory

⁴ DV155 Section A2.4

Preliminary Assessment. Such proposals are by definition the most sensitive and potentially contentious types of proposals...⁵

9. The North Canberra Community Council submitted that DV155:

represents the introduction to DV125 (ACTCODE) and therefore it would seem that substantial changes will be required to DV155. In these circumstances it appears desirable for DV155 to be deferred... [to enable] extensive public consideration...

Major matters which we would consider need revamping in DV155 include:

- the strategic principles have no standing and do not make up a Strategic Plan...
- much sectional and economic material is contained in the Introduction much of which has an ideological basis and should not be part of the Plan.
- the term 'sustainable' is used both for economic sustainability and environmental sustainability and in many cases the reader cannot separate the two [which] are not necessarily compatible...
- particularly important and alarming is the provision for the Minister to institute Master Plans and thereby to determine planning in the ACT without recourse to the Assembly or any planning body which could be regarded as competent by the community. Incidentally DV125 admits that Mater Plans have been used in the B11 and B12 areas to lower the standards prescribed in the Urban Housing Code which was recommended by this standing committee and accepted by the Assembly
- the relationship of Civic, Town and local centres is left vague and relationship to the Region is not adequately treated...

We would ask the standing committee to oversee such a process in view of our experience with PALM...⁶

Conclusion

10. The committee notes that many of the issues raised by the above three submitters applied to the *original* DV dated March 2000. PALM responded to public comment by amending the DV in various places, including the following:

- the reference to Mandatory Preliminary Assessment in the original DV was deleted
- the requirements to consult LAPACs and to encourage broad community involvement have been added
- use of the word 'sustainability' has been amended
- greater detail has been added about where and how Master Plans may be used
- a 12-month limit has been placed on the effect of interim planning guidelines.

⁵ Mr Fitzgibbons, submission dated 10/5/01 [emphasis in original]

⁶ North Canberra Community Council Inc, submission dated 11/5/01

11. The committee is aware that the amended DV still gives PALM and the Minister great power over a decision on Master Plans. This issue concerned the three submitters; it also concerns the committee.

12. In a recent report on master planning for Canberra's 17 Group Centres⁷, the committee recommended considerable changes to the government's proposed master planning process in order to ensure that parliamentarians, as well as the public, are made aware of what PALM might be considering for a specific Group Centre. In the context of considering the present DV, the committee especially draws attention to the following recommendations in its report on Group Centres:

that PALM be required to allow sufficient time for community comment on Centre Master Plans and that PALM be required to formally respond to the public comment it receives (as happens at present with draft variations to the Territory Plan). This formal response should be included in the papers forwarded by PALM to the Minister at the time PALM makes a recommendation on a Group Centre Master Plan [part of recommendation 3]; and

that PALM inform members of the ACT Assembly, and the relevant planning committee of the Assembly, at the time it initiates and/or prepares a Group Centre Master Plan; and when it is considering changing a Group Centre Master Plan [recommendation 7].⁸

13. The committee considers that these two recommendations can usefully apply to the master planning process outlined in DV155, namely, that PALM be required to prepare a formal response to the public comment it receives on a proposed master plan, that this formal response be incorporated into the papers forwarded to the Minister, and that parliamentarians be informed about PALM's activities in relation to master plans.

14. The committee recommends that Section A3[7] of DV155 be amended to stipulate that PALM must prepare a formal response to the public comment it receives on a proposed Master Plan; that this formal response must be incorporated into the papers forwarded to the Minister; and that PALM inform members of the ACT Assembly, and the relevant planning committee of the Assembly, at the time it prepares a Master Plan—and when it is considering changing a Master Plan.

15. The committee is aware of widespread interest in the provisions of Draft Variation to the Territory Plan No.125 dealing with the proposed ACT Code for Residential Development. These provisions have a considerable bearing on the nature of planning in the ACT and it is very likely that they will bear on the content (and wording) of Part A of the Territory Plan. The committee considers that it would be useful to scrutinise the two Draft Variations concurrently.

16. The committee refers to the precedent recently set by the committee's own consideration of two Draft Variations concurrently. These were DV158 dealing with proposed changes to Group Centre Policies, and DV163 dealing with Kippax Group Centre. This committee decided that the two Variations overlapped to a great degree and hence considered both at the one time. The committee reported on both Draft Variations in Report No.72 tabled in the Assembly on 13 June 2001.

⁷ Report No.72 *Draft Variations to the Territory Plan: No.158 Commercial B2C Land Use Policies – proposed changes to Group Centre Policies; and No.163 Kippax Group Centre – proposed expansion of retail core* (13 June 2001)

⁸ Report No.72

17. **The committee recommends that the current DV155 be deferred and resubmitted to this committee's successor by the government at the same time as DV125 dealing with the new ACT Code for Residential Development is also submitted.**

18. The committee is concerned about the status of the preambles that appear in each part of DV155. These preambles:

[are] printed in italics and contained within a box at the beginning of each land use policy. [They describe] in general terms the content and background of the following land use policy. [Their] purpose is to give a brief overview and explanation, however [they do] not form part of the legal policy content of the Plan.⁹

19. PALM told the committee that these preambles could be altered without the Plan itself needing to be varied (though this has not happened to date).¹⁰

20. The fact that the preambles are not a legal component of the Plan and that therefore their standing is somewhat uncertain is a negative aspect of their continued use. However, on the positive side, the preambles give an important context to the more detailed information about land use which follow them. On balance, the committee considers that their advantages outweigh their disadvantages.

21. However, it would be useful if each use of a preamble in Part A contained a succinct reference to the fact that the preamble does not form part of the legal policy content of the Plan and is meant to provide useful background and explanatory material. **A recommendation to this effect appears at the head of this report.**

22. Members of the committee questioned PALM officials about the rationale for removing the current goal in the Territory Plan that states 'to encourage public participation in planning processes, and safeguard individual rights consistent with community needs'. It seems that the background to this decision was that the original Land Act contained a provision that required the Territory Plan to specify the circumstances in which third parties were not entitled to apply for review of decisions and in which public notification provisions did not apply. But this provision was removed by amendments to the Land Act passed in 1996 and which picked up recommendations of the Stein Report.¹¹

23. The rationale for the amendments was that it was more appropriate to use Regulations made under the Land Act to specify public notification and third party appeal provisions than to use the Territory Plan. Though the Territory Plan was amended (by Variation No.88) to bring it into line with the new statutory arrangements, the reference in Part A of the Plan referring to public notification was not removed. PALM considers that its current review of Part A provides the opportunity to update the Plan to recognise the fact that the Plan no longer is the means of determining the extent of public participation in the planning process but, rather, this is the function of the Land Act and Regulations as well as general government policy.

24. The committee notes that the amended DV155 contains a new section headed 'Community Consultation' which refers to the statutory provisions under the Land Act and specifically requires PALM to seek the views of LAPACs or community councils.

25. The committee has carefully considered the suggestion by Dr Cooke that Part A of the Territory Plan should include a commitment to regular updates of the Plan's cadastral

⁹ DV155 Introduction 3.2 p.3

¹⁰ Mr Calnan, PALM *Transcript* 18/5/01

¹¹ *Inquiry into the Administration of the ACT Leasehold* (the Stein Report)

base, for reasons that include facilitating an understanding of the extent of redevelopment throughout the city.

26. The committee understands that the Territory Plan Map is updated with relevant cadastral information only if and when a Variation to the Plan has been gazetted, in which case the cadastral data *for the area affected by that Variation* is updated. Existing technology within PALM does not yet permit the smooth integration of the Territory Plan Map and the cadastral maps containing details of lease boundaries. However, the committee considers that, as technology improves, PALM should move quickly to integrate the Territory Plan Map with the 'live' cadastral maps so that Canberrans can easily see both sets of data: that on landuse in the Territory Plan Map, and that on lease boundaries in the cadastral maps. **A recommendation to this effect appears at the head of this report.**

What happens next

27. Following tabling of the committee's report in the parliament, the government—having regard to this report—may approve the Variation with or without amendment. The government will table the Variation that it has approved. Members of the Assembly have five sitting days to reject all, or part, of that approved Variation.

Mr Hird MLA
Chair
20 August 2001