

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**FURTHER REPORT ON DRAFT VARIATION NO.55 TO THE TERRITORY
PLAN: *RESIDENTIAL LAND USE POLICIES - PROVISIONS FOR
TEMPORARY CARE ACCOMMODATION***

REPORT NO.31

OF THE

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

AUGUST 1997

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

Resolution of appointment of the Standing Committee on Planning and Environment:

[that] a Standing Committee on Planning and Environment [be established] to examine matters related to planning, land management, transport, commercial development, industrial and residential development, infrastructure and capital works, science and technology, the environment, conservation, heritage, energy and resources...

[And that the committee] 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.

[Further, 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 referred pursuant to Section 25 of the *Land (Planning and Environment) Act 1991* or draft Plans of Management referred pursuant to Section 203 of 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 and circulation.

Minutes of Proceedings (Third Assembly) No.1 Thursday 9 March 1995, amended 22 June 1995

Committee Membership

Mr Michael Moore MLA (Chair)

Ms Roberta McRae, OAM MLA (Deputy Chair)

Ms Lucy Horodny MLA

Mrs Louise Littlewood MLA

Secretary: Mr Rod Power

Background

1. Sections 25 and 26 of the *Land (Planning and Environment) Act 1991* require the Executive to refer draft Variations to the Territory Plan to an appropriate committee of the Legislative Assembly for report, and for the Executive to then have regard to the committee's recommendations before approving any Variation. The Standing Committee on Planning and Environment is the appropriate committee to consider such draft Variations.
2. On 29 May 1996 the Minister for the Environment, Land and Planning referred draft Variation No.55 to the committee: *Residential Land Use Policies - Provisions for Temporary Care Accommodation*.
3. The draft Variation proposed to amend the Residential Land Use Policy in the Territory Plan to add two new land uses to the schedule of uses allowed under the Residential Policy, namely, "Habitable suite" and "Relocatable unit".
4. Both new land uses would be subject to land use restrictions, performance controls and the Design and Siting Code for Single Dwellings. The lease purpose clause would remain for a single dwelling only, and there would be no opportunity for separate titles.
5. The proposed changes were intended to make it possible for temporary care accommodation to be provided to persons who are providing care (or who are provided care) for reasons of infirmity or disability. Applicants would be required to submit a Statutory Declaration to this effect. Carers and dependents would be permitted to independently reside either within the same house or in a temporary dwelling on the same block for a period of time.
6. The justification for these changes was stated to be:

The Territory Plan currently permits two residential dwellings (Dual occupancy) on one block providing that the requirements of the Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2) are met. The requirements of the Multi-dwelling Code are generally for self contained and separately titled dwellings and are considered to be too stringent for situations where lessees need to provide temporary accommodation for persons who are providing care or who are provided care. In some instances the requirements of the Multi-dwelling Code have been demonstrated to be detrimental to the level of care required. The Planning Authority recognises that there is a need to allow carers and dependents to independently reside within either the same house or a temporary dwelling on the same block for a period of time.

Consideration by the committee in 1996

7. The committee held a public hearing into the draft Variation on 7 June 1996 (when Government officials appeared) and called for public submissions. Officials briefed the committee for a second time on 19 August 1996. The committee deliberated in private session on several occasions, and produced a report on the draft Variation in November 1996 (Report No.21).

What the committee's report of November 1996 said

8. The committee, in its report, noted a number of concerns raised by the Canberra Accommodation Industry Association and the Council on the Ageing (A.C.T.).
9. The committee came to the view that the draft Variation should not be endorsed until the Government provided greater detail on several matters of concern, including:
 - the detailed arrangements by which lease conditions would be enforced;
 - how terms like 'care', 'family' and 'dependent' are to be interpreted;
 - how it is intended to deal with situations of extended absences of the dependent person;
 - how it is intended to deal with the situation where a property with 'temporary care accommodation' is sold;
 - whether a maximum floor area should be specified for 'temporary care accommodation'; and
 - whether the proposed car parking arrangements for a "Habitable suite" are appropriate.

Subsequent action by the Government

10. The Government responded to the committee's report in February 1997. The Minister did not forward the response to the committee until July 1997.
11. The Government's response included, as an attachment, a document entitled *Guidelines for Temporary Care Accommodation*. The *Guidelines* are intended 'to provide supplementary information and assistance in interpreting' the Variation.
12. As well as the *Guidelines*, the Government's response outlined 'some modifications' to the original draft Variation, including making approvals of temporary care accommodation 'conditional to specific individuals and therefore non-transferable'. The Government's response continued:

The modifications strengthen the enforcement ability of the approval as well as reduce possible inconvenience to applicants and neighbours alike by avoiding the need to set arbitrary approval periods. An approval will not apply for the period a dependent requires care...

Some additional measures are also intended to ensure that both lessees and potential purchasers of affected properties are aware of these obligations, or potential obligations. It is also intended that both at the pre-application stage, and in submitting an application, the proponent is directed to providing information as to how they will remove or convert the unit at the end of the approval period....

The A.C.T. Government Solicitor Office has advised that the form of the approval proposed is, in its view, effective and able to be enforced, if need be, under the enforcement provisions of the Land Act.

13. The Government's response outlined the approach to be taken to defining terms like 'care', 'family' and 'dependent'. In addition, it stated the Government's view that 'significant benefit' exists in setting a performance measure outlining a maximum gross floor area for both 'Relocatable units' and 'Habitable suites'.

14. In relation to car parking, the Government's response states:

After further consideration, the Government has decided that it is desirable to include a performance measure for one car parking space for both 'Habitable suite' and 'Relocatable units'.

15. In summary, the Government considers that the modified draft Variation satisfies the concerns expressed by the committee in its report of November 1996:

The introduction of this policy provides an alternative to dual occupancy for persons who are in a dependent or carer situation and need to reside in separate accommodation on the same block. It is envisaged that the policy is flexible enough to cater for carer/dependent needs but still maintain an appropriate level of control and enforcement ability to ensure applicants are genuine, the residential amenity of an area is maintained and that breaches can be effectively dealt with.

Consideration by the committee in 1997

15. The committee considered the draft Variation during July 1997 and finalised this report on 8 August.

16. The committee is pleased with the modifications to the draft Variation. Members of the committee would be extremely concerned if the Variation, once in place, led to situations where dual occupancy was encouraged or facilitated. But, on balance, the committee considers there is genuine need for improved carer provisions to be in place and the draft Variation should not be further delayed.

Recommendation

17. *The committee endorses the draft Variation to the Territory Plan No.55: 'Residential Land Use Policies - Provisions for Temporary Care Accommodation'.*

Postscript

18. The *Land (Planning and Environment) Act 1991* requires the A.C.T. Executive to have regard to any recommendation contained in a report of an appropriate committee of the Legislative Assembly before approving a draft Variation to the Territory Plan. If it does approve a draft Variation following the committee's report, the Executive must table its decision within five sitting days of approval.

19. A further five sitting days is then provided for any Member of the Assembly to move that the Variation be rejected in whole or in part. Any such motion must be dealt with by the Assembly within five sitting days.

20. If a Variation is not rejected by the Assembly, the A.C.T. Planning Authority (now the Planning & Land Management Group of the Department of Urban Services) will publish a notice in the *Gazette* specifying the date of commencement of the Variation.

Michael Moore MLA
Chair

8 August 1997