



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

Draft Variation to the Territory Plan No. 246
Changes to Residential Area Specific Policy
Overlays-Suburb of Downer

FEBRUARY 2005

Report 4

Committee membership

Mick Gentleman MLA	Chair
Zed Seselja MLA	Deputy Chair
Mary Porter AM MLA	
Secretary:	Hanna Jaireth
Administration:	Judy Moutia

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 ACT Planning and Land Authority – to develop and implement the Territory Plan. The *Land (Planning and Environment) Act 1991* (ACT)⁴ (the Act) requires the Territory Plan to set out the planning principles and policies for giving effect to its object,⁵ 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.⁶

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*.⁷

Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. The ACT 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 for

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

⁴ Accessible at <<http://www.legislation.act.gov.au/a/1991-100/current/pdf/1991-100.pdf>>.

⁵ Land (Planning and Environment) Act 1991, sub-section 7(2)).

⁶ Land (Planning and Environment) Act 1991, sub-section 7(1).

⁷ Accessible at <<http://www.cmd.act.gov.au/canberraplan/>> and <<http://www.sustainability.act.gov.au/policy.html>>

consideration and report⁸ – currently the Standing Committee on Planning and Environment. The Minister is required to have regard to the Committee’s recommendations before approving the proposed variation, or returning it to the ACT Planning and Land Authority with written directions for further action.⁹

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.¹⁰

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.¹¹ If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.¹² Unless wholly or partially disallowed by the Assembly within five sitting days, the variation will commence on the date nominated by the Minister.

⁸ Land (Planning and Environment) Act 1991, section 25.

⁹ Land (Planning and Environment) Act 1991, paragraphs 26(1)(a) and (b), sub-section 26(2).

¹⁰ Land (Planning and Environment) Act 1991, section 9.

¹¹ Land (Planning and Environment) Act 1991, sub-section 26(2).

¹² Land (Planning and Environment) Act 1991, section 29.

Table of contents

Committee membership	ii
Resolution of appointment	iii
Terms of reference	iii
Preface	v
Summary of recommendations	ix
Introduction	1
Background to the Variation.....	2
Consultation comments on DV246	3
Committee comment	5
APPENDIX 1 – DISSENTING AND ADDITIONAL COMMENTS BY MR SESELJA.....	8
APPENDIX 2 – CURRENT TERRITORY PLAN POLICIES.....	11
APPENDIX 3 – VARIATION TO THE TERRITORY PLAN MAP	12

Summary of recommendations

RECOMMENDATION 1

23. The Committee recommends that Draft Variation 246 be agreed to.

RECOMMENDATION 2

24. The Committee recommends that when the proposed Tree Protection Act has commenced, an assessment take place as to whether Blacket Street should be declared a tree management precinct for the duration of any urban renewal in the area in response to DV246.

Introduction

1. Draft Variation to the Territory Plan No. 246 (DV246) proposes changes to the Territory Plan map as follows:

- Remove A10 (Residential Core) Area Specific Policy over Sections 34, 35, 37, 38, 39 and 40; and
- Add B12 (Increased Density Development) Area Specific Policy over Section 39 and Blocks 36–49 Section 34.

The current Territory Plan policies in relation to this area are represented in map form in Appendix 2, and the proposed variation in Appendix 3.

2. On 24 September 2004 the Minister for Planning, Mr Simon Corbell MLA, forwarded a copy of DV246 to the Fifth Assembly's Standing Committee on Planning and Environment for consideration and report.

3. Since there was insufficient time for the Committee to consider the proposal before the Assembly dissolved for the 2004 election, on 28 September 2004 the Committee Chair advised the Minister that DV246 would be considered by the Committee in the Sixth Assembly.

4. The Committee for the Sixth Assembly was formed on 7 December 2004. Mr Mick Gentleman was elected Chair at the Committee's first meeting on 9 December 2004.

5. The Committee considered DV246 on 21 December 2004, and 8 and 11 February 2005. The Committee considered the documentation and consultation reports provided by the ACT Planning and Land Authority, earlier documents concerning the A10 (Residential Core) Area Specific Policy, as well as correspondence and a detailed exposition of views sent to the Committee by several stakeholders who favoured the retention of the earlier and extended A10 policy in Downer.

6. The Committee decided to proceed directly to report and not call for submissions or hold public hearings because there had already been extensive public consultation about the proposal, and it had been considered in detail during the development of the Downer Neighbourhood Plan.¹³

¹³ Accessible at

<http://www.actpla.act.gov.au/neighbourhood_plans/suburbs/wdh/plans/downer-anp.pdf>

Background to the Variation

7. Territory Plan Variation No. 200 (the Garden City Variation) (DV200) introduced the new A10 (Residential Core) Area Specific Policy. This policy permits medium density housing near town, group and local centres and community amenities. It imposes new statutory limitations on multi-unit re-development in established residential areas outside designated core areas, and restrictions on the extent and scale of dual occupancy developments. It also provides increased controls over what is permissible in A10 (Residential Core) areas, including height and building envelope controls. Before this variation was introduced, multi-unit development could occur almost anywhere in a Canberra suburb.
8. In April 2003, in Report No.15, the former Committee recommended that the Government not proceed with DV200.¹⁴ The Government's response to the Committee's report, dated 17 June 2003, agreed in part to three recommendations, agreed to two, noted six, and did not agree to four.¹⁵
9. In August 2003 the A10 (Residential Core) Area Specific Policy was implemented throughout Canberra. The south-western corner of Downer bounded by Northbourne Avenue, Antill Street, Melba Street and Barney Street was designated A10 (Residential Core) Area Specific Policy.
10. In response to Report No.15 the Government agreed to undertake a detailed analysis and investigate specific areas identified for urban intensification before releasing any further draft variation to the Territory Plan for such areas. One of the vehicles for doing this is the Neighbourhood Planning Program. It enables the ACT Planning and Land Authority to adjust the land subject to A10 (Residential Core) Area Specific Policy following consideration of community aspirations for the future development of areas involved in the program. In March 2003 the process for developing a Downer Neighbourhood Plan began, involving a broad range of consultation mechanisms.
11. On 13 September 2004 the Minister for Planning announced that changes would be made to the Territory Plan in response to input from residents from the Neighbourhood Planning processes in Canberra's inner suburbs, resulting from the consultations that started in Watson, Downer and

¹⁴ Standing Committee on Planning and Environment, *Report No.15 – Variation to the Territory Plan, No.200, Garden City Variation – Residential Land Use Policies, Modifications to Residential Codes, and Master Plan Procedures, Land (Planning and Environment) Act 1991*, April 2003.

¹⁵ Government Response: Standing Committee on Planning and Environment Report No 15– Variation to the Territory Plan No 200, Circulated with the authority of Simon Corbell MLA, Minister for Planning, 17 June 2003.

Hackett in March 2003 and in Griffith, Red Hill, Forrest, Hughes, Narrabundah, Garran and Yarralumla, in September 2003.

12. In September 2004 Mr Corbell also directed ACTPLA to prepare additional planning and design policies for development in Residential Core areas. In December 2004 these were on the ACT Planning and Land Authority's work program but had yet to be prepared.

13. DV246 is the ACT Planning and Land Authority's response to the Downer Neighbourhood Plan, which was released in August 2004. Consistent with that Plan it proposes that blocks between Antill Street and Blacket Street (Blocks 36-49 of Section 34 and Section 39) be redesignated to form an Urban Housing Area, under the B12 (Increased Density Development) Area Specific Policy in the Territory Plan. This permits the current mix of single houses and duplexes to be redeveloped over time as contemporary apartments and townhouses to a maximum height of two storeys. The plot ratio in B12 areas is 65%. According to the Downer Neighbourhood Plan the garden suburb qualities of this area, street trees and appropriate front setbacks should be retained. A Section Master Plan is to be developed before any redevelopment, to provide planning and design guidance in addition to those in the Territory Plan and the Urban Housing Code.

Consultation comments on DV246

14. The ACT Planning and Land Authority released DV246 on 13 August 2004 for public comment until 3 September 2004. Five written submissions were received in response. These are summarised in Table 1 below, along with the response from the ACT Planning and Land Authority.

15. In accordance with the *Land (Planning and Environment) Act 1991* (ACT), the ACT Planning and Land Authority also sought and considered the views of the ACT Planning and Land Council, 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 comment.
- The Conservator of Flora and Fauna advised that provided that protection of significant trees was taken into account in any development proposals, the Conservator had no concerns about the proposal.

Table 1: Summary of submissions and responses:

Stakeholder comments	Response by the ACT Planning and Land Authority
Increased density is welcome as it improves accessibility and sustainability, proximity to services and facilities and makes better use of existing infrastructure; the reduced A10 area in Downer protects the southwest corner	[This is consistent with DV246]
Increasing the residential density in inner north, especially Downer and Civic, is opposed. DV246 should be deferred until the A10 areas in Watson and Hackett have been revised.	A10 (Residential Core) Area Specific Policy has been removed from the southwest corner of Downer following consideration of residents' views during the Downer Neighbourhood Plan process. A similar reassessment had been announced for Hackett
The existing pipe system may not cope with increased use.	There is no evidence that the pipe system would be unable cope with modest increased density.
B12 (Increased Density Development) Area Specific Policy is not justified for Antill St under the Spatial Plan or Sustainable Transport Plan	DV246 is consistent with the Spatial Plan and Sustainable Transport Plan. Downer is within 7.5km of the city centre. Increased density within 200m of shopping centres reduces the use of private motor vehicles for shopping.
Permitted design and siting for '4-level' multi-units will adversely impact on amenity.	Under B12 (Increased Density Development) Area Specific Policy and A10 (Residential Core) Area Specific Policy, buildings can be no more than 2 storeys or 8.5 metres, have a maximum plot ratio for residences of 65% and must demonstrate empathy with existing or desired future streetscape character.
The Canberra Spatial Plan does not refer to increased residential densities in inner Canberra.	DV246 is consistent with the Spatial Plan and Sustainable Transport Plan. Both aim to contain urban spread, increase density within a 7.5 radius of the city centre and reduce travel and consumption of land, water and energy. The Territory Plan contains the A10 Policy.

Committee comment

16. The Committee is of the view that the amendments that DV246 proposes in relation to the A10 (Residential Core) Area Specific Policy in Downer respond well to community concerns. The designated B12 (Increased Density Development) Area Specific Policy adjacent to Antill Street near the Dickson Group Centre is consistent with the Canberra Spatial Plan's aim of intensifying residences near commercial centres and transport routes within a 7.5km radius of Civic.

17. The Committee agrees with stakeholders' comments about the need to protect significant trees in Downer. The Conservator of Flora and Fauna highlighted the need to protect significant trees during the consultation process for DV246, as did Downer residents during the neighbourhood planning process. Members are aware that the established trees in Downer give the suburb a special character. The economic, environmental and aesthetic benefits of urban trees are well recognised, and play an important role in the realisation of Walter Burley Griffin's vision of Canberra as a Garden City.

18. There are various appealing streetscapes in Downer created by mature trees. These include Blacket Street (*Quercus palustris* or Pin Oak), Padbury Street (*Quercus cerris* or Turkey Oak), Berry Street (*Eucalyptus cinerea* or Apple Box), Legge Street (*Eucalyptus mannifera* or Broad-leaved Peppermint), and Atherton Street (*Fraxinus raywood* or Claret Ash).¹⁶ Significant trees in these streets are currently protected under the *Tree Protection (Interim Scheme) Act 2001* (ACT). However there will be increased risk to significant trees in Blacket St, which forms a boundary to Section 39, under the proposed application of B12 (Increased Density Development) Area Specific Policy to Section 39 and Blocks 36–Section 34.

19. The Committee notes that the *Tree Protection (Interim Scheme) Act 2001* (ACT) prohibits the damaging or removal of significant trees without the approval of the Conservator of Flora and Fauna.¹⁷

20. The ACT Government has committed to reintroducing to the Assembly the Tree Protection Bill 2004 (ACT), which lapsed with the October election. The Tree Protection Act, when passed, will replace the *Tree Protection (Interim Scheme) Act 2001* (ACT). The bill proposes that trees identified as being of high

¹⁶ ACT Planning and Land Authority, *The Downer Neighbourhood Plan*, September 2004, p.7, accessible at:

<http://www.actpla.act.gov.au/neighbourhood_plans/suburbs/wdh/plans/downer-anp.pdf>

¹⁷ *Tree Protection (Interim Scheme) Act 2001* (ACT), sections 10, 13, 15.

importance during a survey of Canberra trees would be listed on an ACT tree register, and protected. The bill also provides for the declaration of tree management precincts, such as where there is an identified risk to the urban forest values due to development activity; heritage values require the protection of the landscape; or construction activity associated with new estate developments poses a significant risk to trees. An independent expert tree advisory panel is also to be appointed to make decisions about trees and their management requirements. There will also be improved procedures for review of decisions about trees.

21. Whilst recognising that significant trees in the ACT are already protected under the *Tree Protection (Interim Scheme) Act 2001* (ACT), the Committee suggests that when the proposed new Tree Protection Act is enacted, an assessment take place as to whether Blacket Street should be declared a tree management precinct for the duration of any urban renewal in the area in response to DV246.

22. The Committee considers that the proposed retraction of the A10 (Residential Core) Area Specific Policy area from much of Downer, and the introduction of the B12 (Increased Density Development) Area Specific Policy adjacent to Antill Street near the Dickson Group Centre, is a reasonable compromise in the application of sustainability policies. The proposed B12 policy is consistent with the Canberra Spatial Plan's aim of intensifying residences near commercial centres and transport routes within a 7.5km radius of Civic. Had the former A10 policy remained, however, that aim would have been better met. Perhaps when the ACT Planning and Land Authority has implemented the proposed new design guidelines for Residential Core Areas, Canberra residents will be more inclined to accept the necessity of more sustainable urban environments, including substantial residential intensification in inner Canberra.

RECOMMENDATION 1

23. The Committee recommends that Draft Variation 246 be agreed to.

RECOMMENDATION 2

24. The Committee recommends that when the proposed Tree Protection Act has commenced, an assessment take place as to whether Blacket Street should be declared a tree management precinct for the duration of any urban renewal in the area in response to DV246.

Mick Gentleman

Chair

February 2005

Appendix 1 – Dissenting and additional comments by Mr Seselja

I believe it is important that an accurate assessment of the Government's actions in relation to the removal of A10 provisions in Downer be noted.

Firstly, it should be noted that

On the 9th September 2004, the Minister for Planning made a direction to the ACT Planning and Land Authority, pursuant to the Planning and Land Act – Section 12, as Notifiable Instrument NI2004-370. This instrument reduced the impact of the Minister's previous application of A10 policy, in certain suburbs including Downer.

Secondly, I note that the actions taken to scale back A10 core areas in Downer is a welcome recognition on the part of the Government that A10 in its original form has significant problems. In particular, the removal of a significant part of Downer from the reach of A10 less than 18 months after its initial implementation is a demonstration of the ill-conceived nature of the current A10 boundaries. It would be preferable for increased density to be focussed around group centres and major transport corridors rather than scattering it through suburbs and giving it blanket application to totally inappropriate areas such as small residential cul-de-sacs.

These issues were noted by the Standing Committee on Planning and Environment in the fifth Assembly, when it was recommended unanimously that Draft Variation 200 (A10) be rejected. A number of reasons for the recommendation were given by all parties to the Committee, irrespective of their political background. Some of these reasons included that A10 "...was too broad in its application,...lacked a strategic framework,... and lacked longevity."

It is not the place of this Committee to pontificate on A10 policy in its previous application to Downer, or the need for residents of the ACT to "...accept the necessity of more sustainable urban environments..." It is the place of the Committee to comment on the variation sought by ACTPLA, at the behest of the Minister.

The statement in the report that the aims of the Spatial Plan was "better met by the former A10 policy" is not supported by evidence and appears to ignore the unanimous findings of the previous Planning and Environment Committee in examining DV200.

The omission of Section 34 Blocks 1–35 would seem to be inconsistent with the Canberra Spatial Plan, which calls for intensification within 7.5 kms of the City centre. These blocks are adjacent to transport routes and commercial centres, and would appear to be more suitable for intensified development, than many blocks currently subject to the application of A10 in other suburbs of Canberra. It would therefore be appropriate for ACTPLA and Downer residents to re-visit the issue of the correct zoning of this area.

Zed Seselja MLA

14 February 2005

Appendix 2 – Current Territory Plan Policies

The existing Land Use Policy for the area subject to this variation is shown in **Figure 1**.

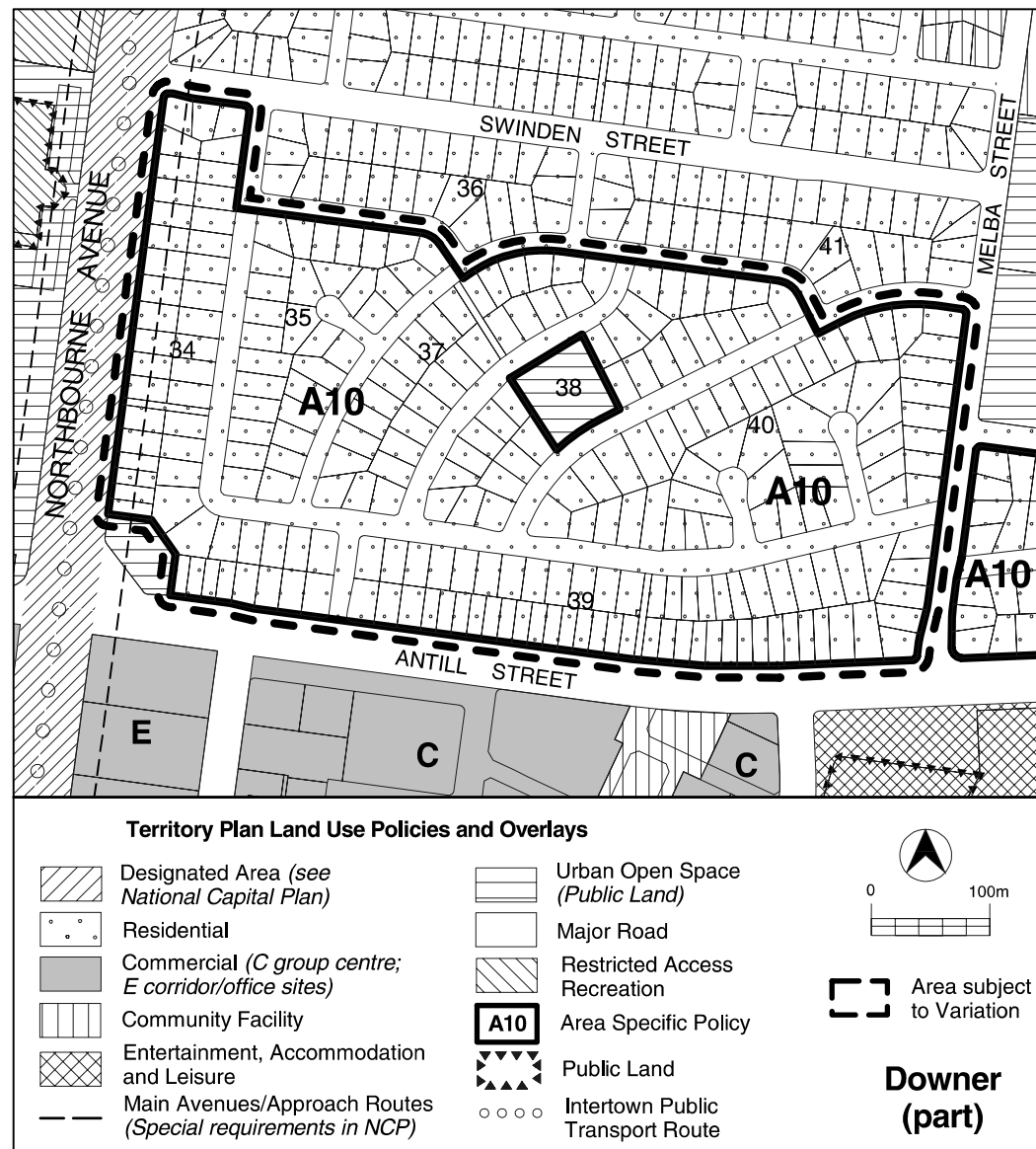


Figure 1 – Territory Plan Current Land Use Policies

Appendix 3 – Variation to the Territory Plan Map

The Territory Plan map is varied for the area shown as subject to variation shown in Figure 2 as follows:

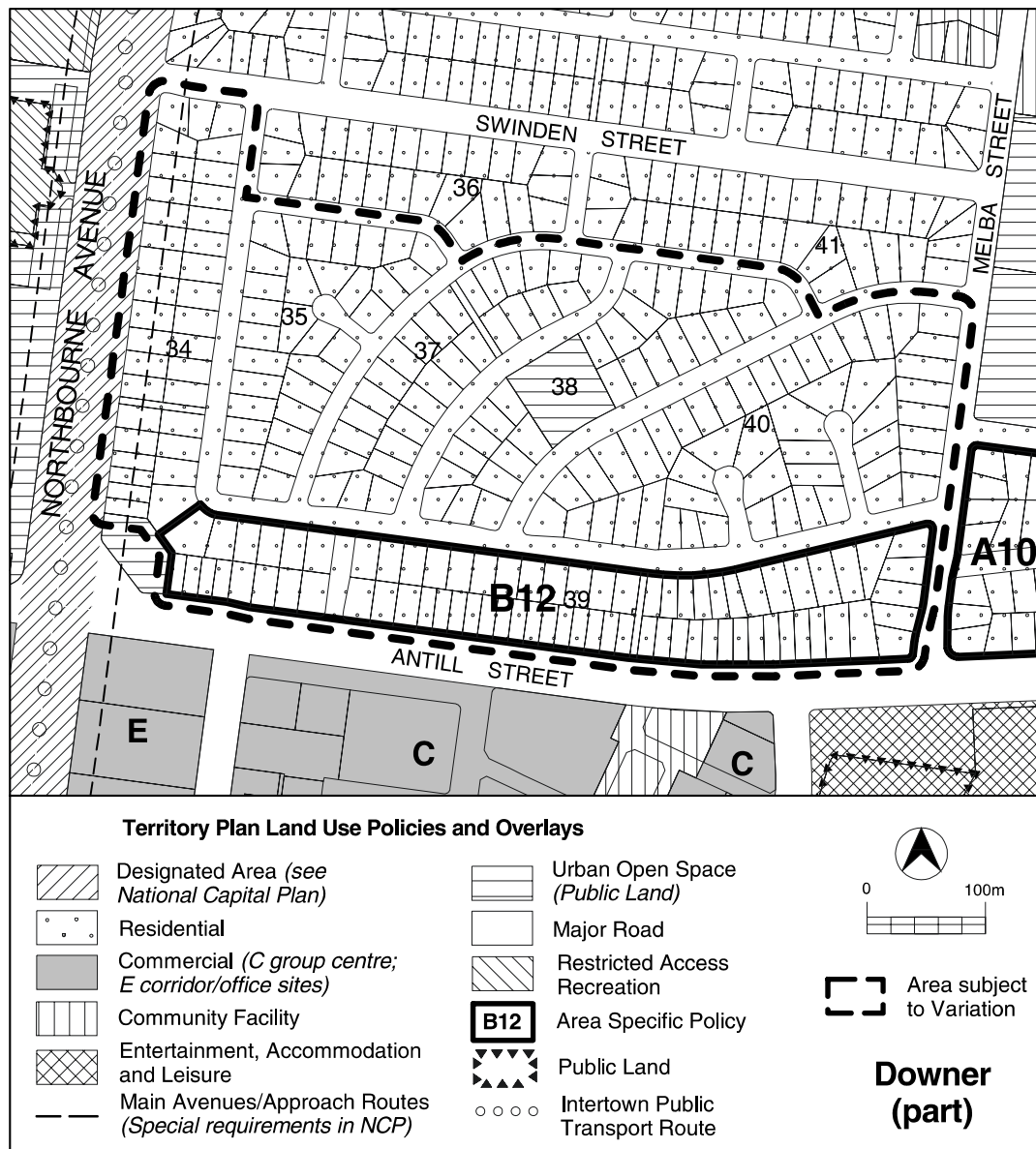


Figure 2: Territory Plan Proposed Land Use Policies