



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

**Variation to the Territory Plan No 225-
Section 129 and part section 34
Narrabundah**

August 2004

REPORT 33

Committee membership

Chair	Ms Roslyn Dundas MLA
Deputy Chair	Mr John Hargreaves MLA
Members	Mrs Vicki Dunne MLA Mrs Helen Cross MLA
Committee Secretary:	Ms Robina Jaffray
Administration:	Mrs Judy Moutia

Resolution of appointment

- (1) The following general purpose standing committees be established and each committee to inquire into and report on matters to it by the Assembly or matters that are considered by the committee to be of concern to the community:
 - (f) A Standing Committee on Planning and Environment to examine matters relating to planning and land management, conservation and heritage, transport services and planning, environment and ecological sustainability.
- (2) 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 204 of the *Land (Planning 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.

Terms of reference

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

25 Consideration by a Legislative Assembly Committee

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 subsection 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.

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List of recommendations

RECOMMENDATION 1

2.26. The Committee recommends that Variation 225 to the Territory Plan, Narrabundah, Section 129 and part Section 34, proceed.

RECOMMENDATION 2

2.27. The Committee recommends that the rights and obligations of the Government and current rural lease holders be clarified and advised to all current rural lease holders.

RECOMMENDATION 3

2.28. The Committee recommends that, in the disposal of land process to take place subsequent to Variation 225 coming into effect, the rights and obligations of the current leaseholders are considered fully.

RECOMMENDATION 4

2.29. The Committee recommends that the final identification of a site for the ACTEW substation take place prior to Variation 225 taking effect and therefore prior to the land disposal process for the land the subject of Variation 225, ie Section 129 and part Section 34, in order that the Government can proceed in good faith with the land disposal process and not disadvantage current leaseholders unnecessarily.

1. Introduction

The Land (Planning and Environment) Act 1991

1.1. The *Land (Planning and Environment) Act 1991* (the Act) provides for a Territory Plan (the Plan) to “set out the planning principles and policies”¹ for the ACT. The objective of the plan is to ensure that the planning and development of the Australian Capital Territory provides an “ecologically sustainable, healthy, attractive, safe and efficient environment”² for the people of the Territory.

1.2. The Plan includes both a Written Statement, setting out general planning principles and more specific land use policies, and a map. The Act places conditions on development or land use within designated areas to meet the principles prescribed for that land on the Plan.

1.3. Land use requirements change over time and the Act sets in place a regime by which the stipulated land use can be altered or varied. Proposals to vary the Plan are prepared by the Territory planning authorities and are known as draft variations. Draft variations are required to be the subject of community consultation. There can be a number of versions of a draft variation depending on the consultation program.

1.4. After public consultation a draft variation, incorporating any amendments made as a result of public comment, and associated papers, is referred by the ACT government to the appropriate committee of the Legislative Assembly for the Australian Capital Territory. The Standing Committee on Planning and Environment is the committee established by the Fifth Assembly to do this.

1.5. The Act does not place any requirements on the committee’s consideration of the draft variation but does require the Government to consider any recommendation that the committee may make in relation to the “draft plan variation, background papers and reports submitted”³. The committee’s reports inform not only the Government but also all Members of

¹ *Land (Planning and Environment) Act 1991*(the Land Act), section 7 (2).

² *ibid*, section 7 (1).

³ *ibid*, section 26(2).

the Assembly on the committee's deliberations and provide a context for the Assembly to consider the Government's approved variation.

2. Draft Variation No 225

2.1. On 12 August 2004, the Acting Minister for Planning forwarded to the Standing Committee on Planning and Environment for consideration and report a copy of DV 225 to the Territory Plan for the lease known as Section 129 Block 3 Narrabundah to allow the land to be used for agricultural activities and associated residential accommodation. The Variation was initiated following debate in the Assembly on 10 April 2002. Appendix 1 shows current land use policies and the site showing development in place around it. Appendix 2 shows the proposed Residential Land Use Policy.

2.2. Due to the impending dissolution of the Assembly and consequential caretaker period and the fact that the issues were well known, having been in the public domain for some time, the Committee decided to proceed directly to report and not call for submissions or hold public hearings.

Background to the Variation

2.3. The background to the Draft Variation is set out below. Paragraphs 2.4 to 2.15 inclusive are drawn from the submission forwarded to the Committee by the Acting Minister for Planning.

2.4. The area is occupied under a short term grazing lease and is the remaining portion of a much larger land holding that has been associated with the lessee's family since the 1920's. The current lease relates to land included in the recently created Section 129 Block 4 on the cadastral data base. The term of the lease is quarter by quarter and allows the land to be used for 'grazing stock' but specifically prohibits a dwelling house. The current lessee wishes to obtain more permanent tenure and construct a dwelling on the site. This would assist in the operation of an animal care business (*Animals-A-Float*), which provides a mobile farm animal nursery service to schools and the wider community.

2.5. Section 129 Block 4, along with Section 34 part Blocks 26 and 35 Narrabundah, are included in the Urban Open Space Policy and covered by an 'X' Overlay on the Territory Plan Map. The 'X' Overlay indicates that the area is not included in Public Land. In response to the Assembly's motion, the Minister for Planning directed ACT Planning and Land Authority (the authority) on 7 May 2002 to undertake a planning review for the land covered by the 'X' Overlay.

2.6. A planning study titled '*Part Section 34 Narrabundah Planning Study*' was completed in March 2003. Amongst other things, the Study recommended a Variation to the Territory Plan to change the land use policy

from Urban Open Space ('X' Overlay) to Broadacre to accommodate agricultural uses and a possible future ACTEW substation.

2.7. The planning study indicated that various constraints would affect the development potential of the study area. These include flood prone land to the north, a drainage path to the west, a sewer vent stack in the south-eastern corner within the arterial road reserve and light spill from the adjacent golf facility to the south. In addition there is a need to provide for an electrical substation. While the final location for the substation has not been determined, this would require a site of approximately 1.2 hectares with an additional 100 metre buffer area. A site was identified adjacent to the velodrome but other options for the location of the substation are now being investigated to determine the most appropriate site for this facility.

2.8. The planning study concluded that up to two dwellings could be accommodated on the site, adjacent to the velodrome and outside existing or potentially constrained areas. Access to the site is currently provided via an unsealed section of Kyeema Street in Narrabundah and sewer, water supply and electricity services could be made available.

Changes to the Territory Plan

2.9. This Variation changes the Territory Plan Map to include part of the Urban Open Space site and a small part of the road reserve for Hindmarsh Drive in the Broadacre policy. The Broadacre policy seeks to provide for uses requiring large sites or clearance from other development and for non urban and special uses on the periphery of urban areas. The range of permitted uses may include, amongst other things, semi rural activities, outdoor recreation, education research, municipal services and community and tourist facilities.

2.9. The policy would allow for the operation of an animal care business. It could also allow for a major electrical substation, which falls within the definition of major utility installation. The exact timing for the construction of the substation will depend on the rate of development in Fyshwick and Symonston as well as a range of other factors. At this stage, it is envisaged that the substation will not be required before 2005. Alternative sites are also being investigated in the Fyshwick area. The final location of the substation is yet to be determined and will be subject to detailed planning approval and a separate Preliminary Assessment of the impacts of this facility.

2.10. At the same time both the Map and Written Statement are varied to adjust the Public Land Overlays applying to the area. The 'X' Overlay, which identifies land excluded from Public Land is removed, thereby confirming part of the site as Urban Open Space and Public Land.

Changes to the Territory Plan Map

2.11. The changes to the Territory Plan map are indicated in Figure 3.1 at Part 3 and detailed as follows:

- Replace the Urban Open Space Policy applying to Section 129 Block 4 and part of Section 34 Block 35 (between Section 129 Block 4 and the velodrome) with the Broadacre policy. This change allows for a range of Broadacre uses including an animal care business.
- Replace a small part of the Major Roads Policy in the south east corner of the site with the Broadacre Policy.
- Remove the 'X' Overlay to confirm the remainder of Section 34 Block 35 and part Block 26 (Errol Kavanagh Oval) as Urban Open Space and Public Land.

2.12. The variation map indicates the proposed land use policy boundaries as accurately as possible but may be subject to adjustments following detailed surveys.

Public consultation

2.13. The Variation was released as a draft for public comment in April 2004 with comments closing on 19 May 2004. A Preliminary Assessment (PA) was released for comment in parallel with the Draft Variation to the Territory Plan. The PA evaluation concluded that potential impacts of the proposal on the environment were adequately addressed and no further environmental impact assessment would be required.

2.14. There were no revisions to the Variation as a result of the consultation process. The majority of submissions expressed concern that the current lessees would not be offered a 99 year lease for the site. Many also expressed reservations about the development of the ACTEW substation on the site.

2.15. The Government submission notes that the land disposal process is separate to the draft Variation process and will occur once the Variation is completed. The Government advised that the issues raised in submissions will be further considered by the Government in making a final decision on the preferred method of land disposal.

Committee comment

2.16. The Committee appreciates the necessity for the current lease holders of the land subject to the Variation to have certainty as to their future. At the

same time, the Committee is concerned that the Government has seen fit to forward this Variation to the Committee and require a response at very short notice.

2.17. While the Committee endorses the Variation to the Territory Plan, the Committee is critical of the Government for its tardiness in forwarding the Variation to the Committee, forcing the Committee to proceed more quickly than it would have liked had more time been available.

2.18. The Committee accepts that the Variation to the Territory Plan is necessary to provide some certainty to the current leaseholders, whatever may ultimately occur in relation to the assignment of the lease. However, the Committee is concerned at the inclusion of the ACTEW substation in the Variation.

The land disposal process

2.19. While the Committee endorses the Variation to the Territory Plan, the Committee recognises that consequential upon that Variation coming into effect is the matter of the disposal of the land and, specifically, that the current lease holders are in the position of potentially losing their lease or having to bid for the lease at public auction.

2.20. The Committee also recognises that the lease arrangements and the disposal of the land are separate issues from the Variation to the Territory Plan. However, s 26(2) of the *Land (Planning and Environment) Act 1991* requires the Minister to 'consider any recommendation made by a committee of the Legislative Assembly in relation to the draft variation, or related documents, referred to the Committee under section 25'. The Committee therefore feels compelled to comment on the land disposal process in this case.

2.21. While the Committee is not in the position of endorsing individual business enterprises, the Committee does have concerns in relation to the issue of rural leases generally, the potential for such leases to be resumed at short notice and reissued as 99 year leases through a public process and the potential impact on the rights and obligations of existing rural leaseholders.

2.22. The Committee notes the comments on the leasing policy in the Government's submission to the Committee. The issues raised include:

- The requirement for land acquisition to be for a public purpose and the rights of current leaseholders if land were not acquired for a public purpose;

- The setting of a precedent for the resumption of rural leases and implications for current rural leaseholders;
- The avowed intention of the Assembly in passing [name of legislation] that rural land offered for extended lease should first be offered to the existing leaseholder.

The resumption of rural leases

2.23. The Committee notes the potential inclusion of the ACTEW substation in the proposed Variation, but further notes that alternative sites for the substation are being investigated. The inclusion of the substation on the site was strongly objected to by submitters.

2.23. The Committee notes that the inclusion of the substation means that the Government will not be in breach of the *Lands Acquisition Act 1994*, by resuming land for a public purpose. However, the committee considers that, if Variation 225 were wholly or partly genuinely for a public purpose, the Government would not be pursuing other sites for the ACTEW electrical substation and therefore would like to see the substation issue decided prior to the Variation coming into effect and the subsequent disposal of the land.

2.24. The Committee notes the comment in the Government's submission that the current lessees are of the view that, because they were required to sign a land management agreement with Environment ACT to transfer the lease in 2000 as per the "Farming in the ACT" rural policy adopted by the Government, they are entitled to a 99 year lease, if the block is in an area eligible for one. The submission further notes that the lessees argue that they will be eligible for such a lease if the Variation goes through.

2.25. The Government concludes that the issues noted above will be considered at the land disposal stage after the Variation to the Territory Plan is in effect.

Committee conclusions and recommendations

2.25. The Committee acknowledges that the land disposal process is separate from the Variation to the Territory Plan, which is the subject of this report. However, the Committee also notes the obligation on the Minister to act in accordance with s26(2) of the *Land (Planning and Environment) Act 1991*.

2.26. The Committee therefore makes the recommendations as set out below.

Recommendation 1

2.26. The Committee recommends that Variation 225 to the Territory Plan, Narrabundah, Section 129 and part Section 34, proceed.

Recommendation 2

2.27. The Committee recommends that the rights and obligations of the Government and current rural lease holders be clarified and advised to all current rural lease holders.

Recommendation 3

2.28. The Committee recommends that, in the disposal of land process to take place subsequent to Variation 225 coming into effect, the rights and obligations of the current leaseholders are considered fully.

Recommendation 4

2.29. The Committee recommends that the final identification of a site for the ACTEW substation take place prior to Variation 225 taking effect and therefore prior to the land disposal process for the land the subject of Variation 225, ie Section 129 and part Section 34, in order that the Government can proceed in good faith with the land disposal process and not disadvantage current leaseholders unnecessarily.

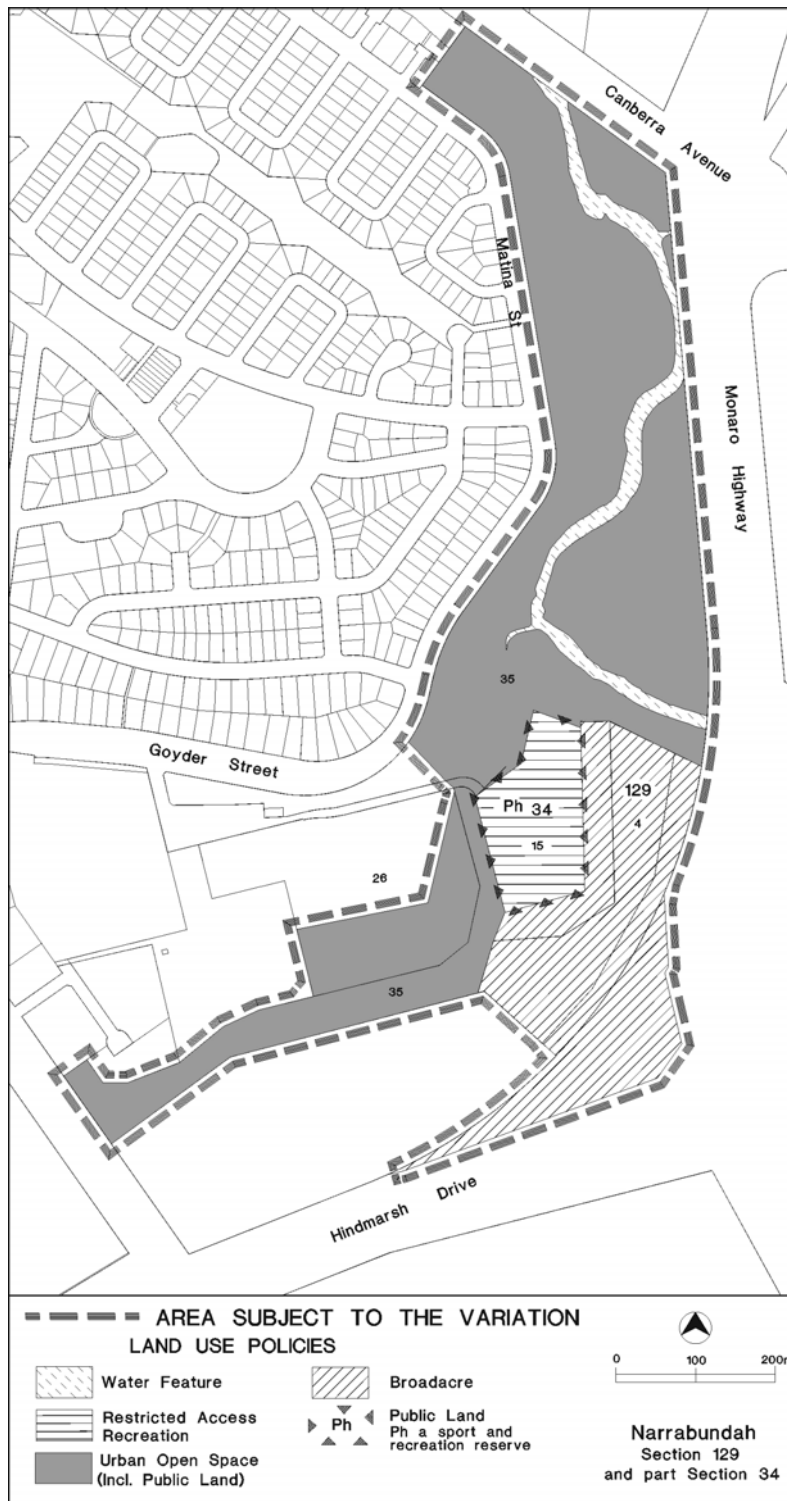
Roslyn Dundas MLA
Chair
16 August 2004

Appendix 1 – Current Land Use Policy Narrabundah Section 129 and part Section 34



Source: ACTPLA Final Variation [Annexure 1]

Appendix 2 – Variation to the Territory Plan Map



Source: ACTPLA Final Variation [Annexure 1]