



Legislative Assembly for the ACT

Standing Committee on Planning and
Environment

Draft Variation to the Territory Plan No.235
Conder Block 2 Section 228 (Conder Group Centre)
Proposed Supermarket Site

July 2004

Report 32

Committee membership

Ms Roslyn Dundas MLA	Chair
Mr John Hargreaves MLA	Deputy Chair
Mrs Vicki Dunne MLA	Member
Mrs Helen Cross MLA	Member

Secretary:	Ms Robina Jaffray
Inquiry Secretary:	Ms Kerry McGlinn
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 Executive shall, within 28 days of receiving a draft 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.

Preface

The Land (Planning and Environment) Act 1991

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.

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.

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.

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.

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

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

² *ibid.*, section 7 (1).

³ *Ibid.* section 26(2).

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Summary of recommendations

RECOMMENDATION 1

1.15. The Committee recommends that future Draft Variations relating to direct lease grants be required to provide in detail both the spatial and economic analysis undertaken and the criteria used to assess proposals.

RECOMMENDATION 2

2.5. The Committee recommends that the Government proceed with the implementation of Draft Variation No.235.

RECOMMENDATION 3

2.6. The Committee recommends that the Government place conditions on the direct sale of the land to ALDI, in that the lease requires the construction and operation of a competitive supermarket on the site.

1. Draft Variation No. 235

Introduction

1.1. This report addresses the background and intent of Draft Variation No. 235 (DV 235).

1.2. On 12 May 2004, the Minister for Planning forwarded to the Standing Committee on Planning and Environment for consideration and report, Draft Variation to the Territory Plan No. 235 – Conder Block 2 Section 228 (Conder Group Centre) Proposed Supermarket Site (DV235). Appendix 1 shows the Territory Plan Map – Conder Group Centre – Location of Commercial ‘c’ precincts.

1.3. Draft Variation No. 235 was initiated by ALDI, who sought the Government’s assistance with land acquisition as ‘development sites are not available; sites are either owned by the Government or closely held by individuals within a highly distorted market, and consequently not available at reasonable market prices’⁴. On 17 November 2003 the Minister for Planning announced that the Executive had agreed to the direct sale of land to ALDI Foods Pty Ltd at sites at the Kippax and Conder Group Centres.

1.4. ACTPLA has advised that the current land use policy for the site at Conder is identified as a “Mixed Services Area” which makes provision for retail related uses requiring large sites and a range of commercial activities and services not usually located in the core areas⁵.

1.5. The current controls applicable to Precinct ‘c’ do not permit a supermarket with a gross floor area (GFA) of more than 300m². To allow an additional supermarket on this site with a maximum GFA of 1500m² requires an amendment to the Territory Plan through a change to the written statement.

ACTPLA Public Consultation Process

1.6. DV 235 was initially released for public comment on 19 February 2004, with a closing date for comments on 5 April 2004. A notice was also published in the Legislation Register on 19 February 2004 and in the Canberra Times on 21 February 2004. ACTPLA received a total of five submissions and these are summarised below.

⁴ Submission 2, McCann Property & Planning on behalf of ALDI, p.7

⁵ Draft Variation to the Territory Plan No.235, Annexure 1, p.2

- Submission 1 – expressed strong support for the proposal ‘We can only see benefits to the community in this proposal. Having an extra supermarket within the Conder Group Centre will not only give residents a greater variety of choices for shopping it will also give a huge boost of opportunities to those needing employment in the area’⁶.
- Submission 2 – formally objected to the proposal as ‘the variation if approved will undermine our unit holder significant investment in the centre, and could have adverse impacts on the viability of many of the small businesses in Lanyon Marketplace’⁷;
- Submission 3 – expressed concerns relating to the draft variation as Woolworths operates a supermarket in the Lanyon Market Place adjacent to the proposed site ‘our research leads us to be convinced that the South Tuggeranong catchment clearly cannot support two supermarkets’⁸;
- Submission 4 – supported the proposal but is concerned about the anticipated increase in traffic (car & pedestrian) and ‘loss of privacy’⁹ along his property line which is located near the proposed site;
- Submission 5 - advised that ‘instead of a another supermarket at Conder, it would be more beneficial for the Conder/Gordon/Banks community to have a medical centre, child care or other non retail service facility’¹⁰;

Conduct of Inquiry

1.7. The Committee reviewed the proposed policy change, noting the public consultation process undertaken by ACTPLA between 19 February 2004 and 5 April 2004, which resulted in it receiving the five (5) submissions as listed above. As the majority of stakeholders expressed particular concerns regarding the proposal, the Committee resolved to seek public submissions for Draft Variation No.235.

1.8. The Committee advertised in the Canberra Times on Saturday 12 June 2004 and the Chronicle on 15 June 2004 inviting interested organisations and individuals to lodge submissions by 25 June 2004. The Committee received a

⁶ Submission 1 – George & Gwenneth Atherton

⁷ Submission 2 – James Fielding Group on behalf of Lanyon Market Place

⁸ Submission 3 – Woolworths Limited

⁹ Submission 4 – Sudhir Sane

¹⁰ Submission 5 – Anne Reinhard

total of three submissions, of which two organisations had also lodged original submissions with ACTPLA.

- Submission 1 – Woolworths Limited requested that a full Planning Study be undertaken to assess the ‘social, economic and environmental impacts of establishing a second supermarket at the Conder Group Centre’¹¹;
- Submission 2 – McCann & Associates Pty Ltd on behalf of ALDI outlined the public benefits that would arise from the proposal ‘an exclusive product range, a different style of retailing, an environmentally friendly approach to retailing and consistently lower prices’¹²;
- Submission 3 - The James Fielding Group requested that ACTPLA prepare a full Planning Study as ‘the livelihood of numerous small investors and small business owners could be adversely affected’¹³.

The direct sale of land to ALDI

1.9. Of significant concern to the Committee is that the explanatory documentation did not identify the reasons why the Executive agreed to the direct sale of land to ALDI at sites in the Kippax and Conder Group Centres rather than opting for the more competitive alternative to offer the sites on the open market.

1.10. Under Section 161(7) of the *Land (Planning and Environment) Act 1991*, the Executive can grant a lease by direct sale, which is ‘in accordance with criteria specified in a Disallowable Instrument’¹⁴. A copy of Disallowable Instrument DI2003-220 Criteria for Direct Lease Grants (Commercial, Industrial, Residential and Tourism) at Appendix 2 outlines the specific requirements. The Committee also noted that if the proposal does not meet these criteria it is not progressed.

1.11. The Committee acknowledges that, as part of the direct sale application process and to satisfy the Public Interest Test, ALDI was requested ‘as part of the direct sale application process, to establish that the public benefits that would arise from the direct sale would substantially exceed those that would flow from a competitive process and that these

¹¹ Submission 1 – Woolworths Limited

¹² Submission 2 – McCann Property & Planning on behalf of ALDI Stores

¹³ Submission 3 – James Fielding Group, Manager of the Lanyon Market Place

¹⁴ Property Advisory Council, *Appropriateness of Dealing with Developers Outside a Competitive Process*, June 1999, p.23

benefits outweigh any detriment resulting from a lessening of competition for the land sale'¹⁵.

1.12. Evidence provided by ACTPLA in the *Report on Consultation with the Public and Government Agencies (Annexure 2)*, dated 23 April 2004, indicates that ACTPLA had also undertaken the appropriate processes to determine the suitability of land within the ACT for further supermarkets, and that both the economic and environmental impacts were assessed to determine the best location.

1.13. ACTPLA also informed the Committee that statistical evidence indicates that the population is continuing to grow in the South Tuggeranong area. 'At June 2003 the population of the primary catchment (Banks, Conder and Gordon) is estimated to have been 16,800 compared to 16,300 at June 2002. By 2008 it is predicted the population will have grown to 18,700'¹⁶. The Committee agrees that it is 'therefore essential to ensure that facilities and services at the Conder Group Centre meet the needs of that community'¹⁷.

1.14. The Committee considers that ACTPLA should have clearly outlined and presented in greater detail both the criteria used for direct lease grants and its spatial and economic analysis in the recommended final Variation (*Annexure 1*) to ensure the transparency of the planning assessment process.

Recommendation 1

1.15. The Committee recommends that future Draft Variations relating to direct lease grants be required to provide in detail both the spatial and economic analysis undertaken and the criteria used to assess proposals.

¹⁵ Submission 2 – McCann Property & Planning on behalf of ALDI Stores, p.2

¹⁶ ACTPLA Report on Consultation with the Public and Government Agencies, DV235, 23 April 2004 p.5

¹⁷ *ibid.*, p.8

2. Conclusion

2.1. It is not the role of a Committee of the Assembly to make commercial decisions relating to development in the ACT, but rather to comment and recommend where certain land use policies may impede reasonable commercial decisions being made. The findings of this Committee suggest that it is the case at the Conder Group Centre, that land use policies be amended to allow for the best possible outcomes for the community.

2.2. While the Committee acknowledges the specific concerns of the key market stakeholders at the Lanyon Market Place, the Committee believes that a commercial enterprise such as ALDI should not be stopped because it may or may not represent a threat to the key retail nucleus at the Conder Group Centre.

2.3. The Committee believes there is a strong need to encourage competition in the supermarket industry to increase the choice and competitive pricing of goods to consumers in the catchment area of Banks, Conder and Gordon.

2.4. The Committee also notes that under the ACT Leasehold system land can be sold with restrictive conditions. To ensure that the lease conditions of the direct sale are adhered to the Committee deems it reasonable to place a condition on ALDI to build and operate a competitive supermarket on the site to 'avoid the risk of land speculation or other unintended consequences'¹⁸.

Recommendation 2

2.5. The Committee recommends that the Government proceed with the implementation of Draft Variation No. 235.

Recommendation 3

2.6. The Committee recommends that the Government place conditions on the direct sale of the land to ALDI, in that the lease requires the construction and operation of a competitive supermarket on the site.

¹⁸ Submission 2 - McCann Property & Planning on behalf of ALDI, p.7

Roslyn Dundas MLA
Chair

Appendix 1 – Variation to the Territory Plan Map

The layout and location of the Conder Group Centre and associated precincts is shown in **Figure 2.1**.

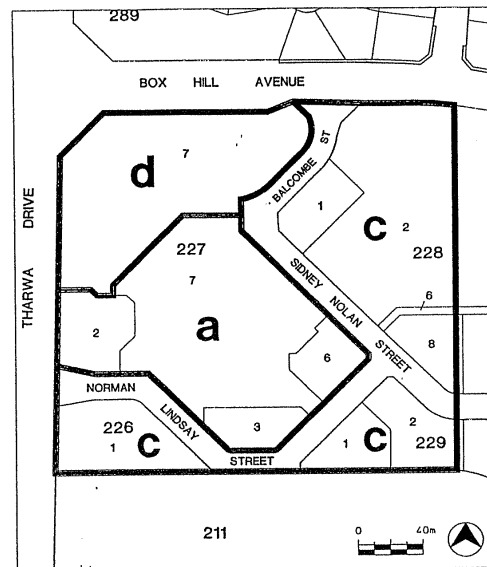


Figure 2.1 – Territory Plan Map – Conder Group Centre – location of Commercial 'C' precincts

2.4 Proposed Changes

The draft variation proposes to allow for a supermarket with a maximum GFA of 1500m² in Precinct 'c' on Block 2 Section 228 Conder through a change to the written statement.

2.5 Reasons for the Proposed Variation

The subject site is currently within Precinct 'c' of the Commercial 'C' Group Centre Policies. A General Control that applies to Precinct 'c' areas restricts supermarket development to a maximum GFA of 300m². It is proposed to amend the Territory Plan to allow the development of a supermarket with a maximum GFA of 1500m².

Appendix 2 – Disallowable instrument DI2003-220

Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) CRITERIA FOR DIRECT LEASE GRANTS (COMMERCIAL, INDUSTRIAL, RESIDENTIAL AND TOURISM) DETERMINATION 2003*

Disallowable instrument DI2003-220

made under the

Land (Planning and Environment) Act 1991 section 161(7)

The ACT Executive REVOKES instrument No 228 of 1997 and DETERMINES criteria for the direct grant of a Crown lease for any or all of COMMERCIAL, INDUSTRIAL, RESIDENTIAL and TOURISM purposes. The Criteria are:

- the Planning and Land Authority must be satisfied it is in the public interest to grant the lease.
- the applicant must complete and sign a preliminary application giving details of:
 - the development proposal;
 - the proposed lessee;
 - form of tenancy, stating shares if relevant;
 - address for service of notices; and
 - proof of full company particulars (if applicable).

If negotiations are progressed, the applicant must:

- provide full details of the proposed development;
- demonstrate the financial capacity to manage the land;
- demonstrate the non-financial capacity to develop and manage the land, including details of expertise, resources and experience to undertake the development;
- demonstrate the long-term economic viability of the proposal;
- demonstrate that the grant of the lease will:
 - benefit the economy in the Territory or region;
 - contribute to the environmental, social or cultural features in the Territory or region;
 - introduce new skills, technology or services into the Territory or
 - contribute to the export earnings and import replacement of the Territory or the region.
- provide a Bank Undertaking required by the Planning and Land Authority.
- pay the agreed value of the lease as either a capital sum or land rent.
- pay the fees and charges notified as being applicable.
- have the support of the relevant Government agency/agencies.

Mr Wood
Minister for Urban Services
8 July 2003

Mr Corbell
Minister for Planning
8 July 2003

*Name amended under Legislation Act 2001 s 60

Appendix 3 – Acronyms

ACTPLA	ACT Planning and Land Authority
DI	Disallowable instrument DI2003-220
DV 235	Draft Variation to the Territory Plan No. 235 – Conder Block 2 Section 228 (Conder Group Centre) Proposed Supermarket Site
GFA	Gross Floor Area