

**Draft Variation No 164 to the Territory Plan  
Community Facility and Use Policies –  
Proposed Changes**

**Report No 7**

Standing Committee on Planning and the Environment

August 2002

Legislative Assembly for the Australian Capital Territory





## Committee membership

Mrs Vicki Dunne, MLA (Chair)

Ms Katy Gallagher, MLA (Deputy Chair)

Ms Roslyn Dundas, MLA

Secretary: Derek Abbott

Administration: Judy Moutia

## Resolution of appointment

- (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:
  - (f) a Standing Committee on Planning and Environment to examine matters related to planning and land management, conservation and heritage, transport services and planning, environment and ecological sustainability.
  - ...
- (3) 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.

*Minutes of Proceedings, No 2, Tuesday 11 December 2001, pp 11 to 13*



## **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 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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## **Summary of recommendations**

### **Recommendation 1**

**The committee recommends that Draft Variation 164 be endorsed by the Legislative Assembly.**



# 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”<sup>1</sup> 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”<sup>2</sup> for the people of the Territory.

1.2. The Plan includes both a Written Statement, setting out general planning principals 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”<sup>3</sup>. 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.

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

<sup>2</sup> *ibid.*, section 7 (1).

<sup>3</sup> *op.cit.*, the Land Act, section 26(2).



## 2. Draft Variation No 164

2.1. Community facilities encompass a wide range of possible uses. Schools, child-care centres, hospitals, convalescent homes, hostels and hospices are typical examples.

2.2. This draft variation does not refer to any specific development proposal. It is a product of a review of community facilities land use policy conducted by PALM in 2000 which,

...identified that, in some areas, there was quite a significant area of under-utilised land within the community facilities designation and that it was appropriate to review the policies applying to land so designated – with a view to ensuring that it be used in the most effective manner.<sup>4</sup>

2.3. The key issue that emerged from the review related to the provision of accommodation for the elderly and people with disabilities. PALM found that,

... because of the way the policies were structured and the restrictions around them, we were finding we were not able to utilise the land to the greatest possible extent, to meet what is fairly widely accepted as a growing need.<sup>5</sup>

The use of under-utilised or surplus community facility buildings was also identified as an issue.

2.4. The most glaring restriction was the restriction on permissible retirement complexes for the elderly. Under the current policy a retirement complex must include a nursing home. This severely limits the provision of what is described in the variation as ‘supportive housing’ – where residents are largely independent but have access to support as required.

2.5. PALM noted that the current policy is also too rigid and can result in almost ludicrous outcomes. For example, it was explained to the committee that a community group wishing to use community space to run a child care centre is perfectly acceptable under the current rules. However should a community group wish to *administer* a child care system from community space that would be unacceptable because ‘...they [would be] undertaking administrative functions associated with the provision of community facilities or community services’.<sup>6</sup>

2.6. The use of ‘surplus’ community facilities is also inhibited by the wording of the existing policy. Surplus schools buildings can be used by

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<sup>4</sup> Mr G Calnan, Planning & Land Management, transcript of evidence, 14 June 2002, p.2

<sup>5</sup> *ibid.*, p.2

<sup>6</sup> *ibid.*, p.5

community and non-profit groups for a range of activities but other surplus community buildings cannot.

2.7. The variation proposes to replace the existing Community Facility Land Use Policy at Part 4B of the Territory Plan Written Statement with a revised policy which will address these problems. The objective of both the existing and the revised policies is 'to ensure that adequate sites are available to meet community needs for community services and facilities in appropriate and accessible locations'.<sup>7</sup> This variation reflects the need to have land available to respond to changing demographics and service delivery policies and practices.

2.8. The proposed variation will ensure that control over community facilities is retained and priority given to the most appropriate community use by restricting leases for alternative uses to five years.

## **Community Consultation**

2.9. Draft Variation 164 was released for public comment in July 2001 with a closing date for comment of 10 September 2001. In addition to the normal distribution PALM sent the variation to a wide range of community groups. Eleven submissions were received. The revised draft variation was submitted to the ACT Executive in March 2002.

2.10. The most important changes related to the definitions of supportive housing and residential care accommodation mentioned in paragraph 2.4. The use of the term 'supported accommodation' in the original draft variation had been found to cause confusion.

## **Discussion**

2.11. Members of the committee were concerned about the extension of access to community land to for profit activities such as recreation centres. Officials at the committee's hearing noted that the designation 'community land' had never precluded for profit activities; child care centres, diagnostic centres and some educational facilities were cited as examples.<sup>8</sup>

2.12. The use of community land by commercial activities does not carry with it any concessional benefit to the lessee. The cost of a lease on community land reflects the nature of the activity to be undertaken. Where the lessee is a commercial organisation the lease reflects full market value.

2.13. The committee received a submission from the Griffith/Narrabundah Community Action Group raising a number of issues with regard to the definitions of 'residential care accommodation' and 'supportive housing'.

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<sup>7</sup> Planning and Land Management Group, Urban Services, *Draft Variation to the Territory Plan No 164, July 2001*, 2.

<sup>8</sup> Mr G Calnan, Planning & Land Management, transcript of evidence, 14 June 2002, p.9.

2.14. The Group believes that the definition of ‘residential care accommodation’ is inadequate in that the phrase ‘...an agency or organisation that exists for the purposes of providing accommodation and services ...’ does not exclude purely commercial activities such as serviced apartments.

2.15. The committee does not, however, support the Groups proposed amendment, which would limit residential care accommodation to ‘...persons with special housing needs for reasons of infirmity (due to age) or disability’. The committee believes that this category should be broad enough to accommodate other residential accommodation such as student residences or boarding houses.

2.16. The Community Action Group expressed concern that no specific ‘community needs assessment’ would be required prior to the establishment of ‘residential care accommodation to ensure that sufficient community land existed in a particular area to meet projected needs. It was also concerned at some ‘overly broad’ definitions in DV 164. However, any application to construct a facility would be the subject of a development application and/or a change of use process. Thus the process of approval would involve ensuring that requirements of the Territory Plan would apply to any decision to develop a residential care facility. The committee does not believe an additional requirement needs to be built into DV 164.

2.17. Funeral parlours are identified as a specific activity that will have access to community land. At present these facilities are limited to commercial precincts within industrial areas and service areas in town centres. As such the settings may be wholly inappropriate to the needs of people using them. While these are clearly commercial ventures the committee agrees that the nature of the service provided is appropriate to community land.

2.18. However Committee members sought clarification of:

- What constitutes a funeral parlour; and
- Whether locating a funeral parlour near a school or health centre is any more appropriate than siting it in an industrial area?

2.19. The definition of a funeral parlour requires the premises to include a chapel and provide services such as grief counselling. A mortuary-type service would not meet the requirements. Officials noted that decisions on siting such facilities would be subject to a community needs assessment regarding the adequacy of land available for other community uses and the compatibility of the proposed activity with existing uses of the land.<sup>9</sup>

2.20. In approaching this aspect of the Territory Plan it is important to look at the purpose for which land is being used, not simply whether it is a ‘commercial’ or ‘community’ activity. It is also important to have sufficient flexibility within the planning mechanisms to respond not only to the demographic changes mentioned above but also to changing social mores. For example, for many people the funeral parlour provides a service which would once have been provided by the church.

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<sup>9</sup> Ms S Graham, Planning & Land Management, transcript of evidence, 14 June 2002, p.11.

2.21. The committee supports the broad intention of this variation and is satisfied that its specific concerns have been adequately addressed. **The committee therefore recommends that Draft Variation 164 be endorsed by the Legislative Assembly.**

Vicki Dunne MLA

Chair

14 August 2002