

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

***DRAFT VARIATION TO THE TERRITORY PLAN (NO.58):
RESIDENTIAL LAND USE POLICIES***

**REPORT NO.27
OF THE
STANDING COMMITTEE ON PLANNING AND ENVIRONMENT**

MAY 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 25 March 1997 the Minister for the Environment, Land and Planning, Mr Gary Humphries MLA, referred to this committee the draft Variation and background papers relating to a draft Variation to the Territory Plan No.58: 'Residential Land Use Policies'.

The draft Variation

3. The draft Variation proposes to:

- prohibit multi-unit development, through subdivision or lease variation, of single dwelling residential blocks until five years after the completion of the original dwelling; and
- recognise the role of approved community advisory committees on planning (currently Local Area Planning Advisory Committees or LAPACs).

Consideration by the committee

4. On 18 April 1997 the committee was briefed by officials of the Planning and Land Management Group [PALM] of the Department on Urban Services. The committee then deliberated in private session. The committee finalised this report on 2 May 1997.

5. The committee has no problem with the draft Variation as far as it goes, that is, with the prohibition of multi-unit development of single dwelling residential blocks for five years after construction and formal recognition of the role of LAPACs.

6. However, the draft Variation bears, either directly or indirectly, on three further matters. The first is the time period to prepare a draft Variation to the Territory Plan. The second is the broad question of how best to ensure that residential amenity is protected. The third is the length of time before revised Guidelines are prepared for the B1 areas of the Territory Plan (whether or not they are included in a further draft Variation).

The time period to prepare a draft Variation to the Territory Plan.

7. The committee notes that draft Variation No.58 followed the *Residential Redevelopment Review* by Mr Robert Lansdown AO CBE (released in November 1994). This Report was made to the (then) Minister of Environment, Land and Planning. The Report dealt with residential redevelopment activity and its impact on the amenity of neighbourhoods

8. In response to Mr Lansdown's Report, the then Government formulated a draft Variation [No.33] to prohibit additional dwellings (including dual occupancies) from being approved or developed on existing single dwelling leases in new areas until five years after the completion of the original dwelling, and to prohibit approval or development of three storey residential buildings in B1 Areas in North Canberra until Local Area Plans were produced by the (then) Planning Authority.

9. Subsequently, draft Variation No.33 was withdrawn by the Planning Authority and a new Variation substituted [No.58] in February 1996. As with the previous Variation, its provisions held interim effect for 12 months .

10. The committee notes the concern of PALM officials about the fact that it is now more than 12 months from the release of draft Variation No.58 and hence its provisions have lapsed.

11. In regard to the delay in bringing forward the draft Variation, the Minister commented, in his letter referring the present Variation to the committee, that the draft Variation 'was submitted by the Planning and Land Management Group (PALM) for approval in November last year [but] unfortunately, for reasons I am unable to determine, the original documents were not received in my office'.

12. The cumulative effect of the above circumstances is that the draft Variation now before the committee has been **over two years in the making** - but even so, its interim provisions are out of date! This indicates to the committee that something is wrong with the process used to prepare a draft Variation to the Territory Plan.

The broad question of how best to ensure that residential amenity is protected.

13. The Lansdown Report into residential amenity made a considerable number of recommendations, some of which have been implemented, in various ways, by successive Governments. Of course, two are the subject of the current draft Variation to the Territory Plan and, as indicated, the committee has no problem with them. But three further recommendations of the Lansdown Review bear on wider issues of residential amenity and raise issues of concern to members of the committee.

14. These recommendations included a call for the Planning Authority to improve its identification of urban areas with different residential characteristics and different levels of visual and physical amenity; a call for the Government to set some specific limitations on dual occupancy (additional to that proposed for new residences); and a call for the Government to re-examine the potential impact of the redevelopment process in the B1 zone on existing residents.

15. One member of the committee considers that the question of dual occupancy is of great significance, and he addresses it in the form set out in 'Additional Comments' appended to this Report.

The length of time before revised Guidelines are prepared for the B1 areas of the Territory Plan (whether or not they are included in a further draft Variation).

16. The committee is aware that planning officials are close to completing a review of the B1 policy, including possible replacement of the Guidelines that currently apply. The review may lead to a further draft Variation dealing specifically with the B1 Areas. Officials told the committee that the 'logistics' of the public consultation process, subsequent analysis by planners of issues raised and the eventual preparation of a draft Variation may take six to nine months.

17. The committee is concerned about the length of time of this process. The committee is aware that it is possible for the Minister, or the Chief Planner, to adopt a new set of Guidelines applying to the B1 Areas. The committee also is aware that Guidelines for specific areas of the Territory Plan have been treated, to date, as akin to a draft Variation - that is, a full process of public consultation has been followed, with the final version referred to the Planning Committee for comment before adoption by the Planning Authority. Such Guidelines are not disallowable instruments; however, the practise has been followed of tabling them in the Assembly for the information of Members.

18. The committee wishes to emphasise its concern about the long time being taken to bring revised Guidelines for the B1 Areas to the Assembly. The committee will very carefully consider the revised policy applying to B1 when eventually it emerges from the planning and Ministerial processes.

Recommendations

(1) The committee endorses the draft Variation to the Territory Plan (No.58): 'Residential Land Use Policies'.

(2) The Standing Committee on Planning and Environment recommends that the Government review the procedures and processes used to handle draft Variations, with the aim of significantly reducing the time taken for a draft Variation to reach the Planning and Environment Committee and, subsequently, the Legislative Assembly.

(3) The Standing Committee on Planning and Environment recommends that the Government speed up the review of B1 and quickly announce the Government's response to the review, including its response to the desirability of new Guidelines - and then facilitate their speedy referral to the Standing Committee on Planning and Environment. This recommendation reflects the Committee's disappointment - and frustration - about the Government's delay in bringing forward revised proposals for the B1 Areas.

Postscript

19. 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.

20. 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.

21. 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

6 May 1997

ADDITIONAL COMMENTS BY MICHAEL MOORE MLA (CHAIR)

1. I am very concerned that the draft Variation being considered by the committee does not address the wider issues associated with dual occupancy. Some of these wider issues were addressed in submissions to the Planning Authority during the public consultation stage.

2. The background papers to the draft Variation included copies of submissions to the Planning Authority on draft Variations No.33 and 58. The National Trust of Australia (ACT) submitted that ‘the issue of dual occupancy in principle needs to be expanded and discussed in greater detail, for... dual occupancies do have potential for real concerns in heritage areas’. Professor Troy (Head, Urban Research Program, ANU) submitted that:

The Proposed Variation No.58 would have the effect both of greatly weakening, even destroying, the planning system and subjecting all areas to high levels of risk that the amenity which they now enjoy will be destroyed or compromised after five years. One of the reasons Canberra’s suburbs have high levels of amenity is that Canberra has had a strong planning system in which the rights (and obligations) of leaseholders are spelled out and which generate high levels of confidence by leaseholders in the integrity of the Plan and the planning process. The proposed Variation would destroy that.

If the purpose of the Variation is to increase residential density it would seem preferable to plan for areas to have higher density and to devise the policies to bring about that change. That is, if it is desirable to increase density in new areas they should be so planned rather than leave it to speculative development which subjects everyone to the threat of reduction in their amenity. If it is desirable to increase density in some of the older areas, appropriate planning studies should be undertaken to identify where and how much redevelopment should be encouraged....

I do not believe that proceeding with piecemeal Variations of the kind proposed in Variation No.58 (or 33) is consistent with good planning...

3. The draft Variation currently before the committee does not address the wider issue of dual occupancy, as seen by the National Trust or Professor Troy.

4. I am very concerned about the situation where dual occupancies are permitted throughout Canberra - if only after five years in the case of new residences.

5. I consider that the Government should restrict dual occupancy to specific areas that have been identified after detailed and careful examination of the impact of dual occupancy on residential amenity.

6. Therefore, I feel that an appropriate recommendation to go before the Legislative Assembly, and the Government, is along these lines:

- that the Government adopt a policy that restricts dual occupancy to specific areas of Canberra, identified after detailed and careful examination of the impact of dual occupancy on residential amenity.*

Michael Moore MLA
Chair

6 May 1997