

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DRAFT VARIATION TO THE TERRITORY PLAN (NO.55):

RESIDENTIAL LAND USE POLICIES -

PROVISIONS FOR TEMPORARY CARE ACCOMMODATION

REPORT NO.21

OF THE

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

NOVEMBER 1996

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)

Mr Trevor Kaine MLA (Deputy Chair)

Ms Lucy Horodny MLA

Ms Roberta McRae, OAM 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 29 May 1996 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.55: *Residential Land use Policies - Provisions for Temporary Care Accommodation*.

The draft Variation

3. The draft Variation proposes to amend the Residential Land Use Policy by adding two new land uses to the schedule of uses allowed under the Residential Land Use Policy, namely, "Habitable suite" and "Relocatable unit".

4. Both new land uses would be subject to land use restrictions, performance controls and the Design and Sitting Code for Single Dwellings (Appendix III.I). The lease purpose clause will remain for a single dwelling only and there will be no opportunity for separate titles.

5. The proposed changes are intended to make it possible for temporary care accommodation to be provided to persons who are providing care (or who are provided care) for reasons of infirmity (due to age) or disability. Applicants would be required to submit a Statutory Declaration to this effect. Careers and dependents would be permitted to independently reside either within the same house or a temporary dwelling on the same block for a period of time.

Consideration by the committee

6. On 7 June 1996 the Committee was briefed, in public session, by officials of the (then) Planning Authority and of Lease Administration section. The Committee asked the officials to provide further information about how local government handled the provision of housing for dependent persons.

7. The draft Variation was again considered at private meetings of the Committee on 13 June 1996 and 24 June 1996. At the latter meeting, it was decided to call for public comment on the draft Variation. Advertisements to this effect appeared in the *Canberra Times* (Public Notices section) on Saturday 29 June 1996 and thereafter in other local papers.
8. The Committee again considered the draft Variation at its private meeting on 2 August 1996. It was agreed to request a further briefing by officials, which took place on 19 August 1996 (the officials being from the Planning and Land Management Group of the Department of Urban Services, and from the Heritage Council of the A.C.T.).
9. On 30 August 1996 and on 12 September 1996 members again considered the draft Variation in private session.
10. The Committee finalised this report at private meetings on 22 November and 29 November 1996.

Public comment

11. The Committee received three responses to its call for public comment on the draft Variation. These responses are summarised below (in alphabetical order).
12. The Canberra Accommodation Industry Association stated:

Whilst the Association understands the needs of Carers and is sympathetic to those needs, great concern is felt that this type of accommodation could eventually lead to such relocatable units being used as commercial lettings once they are no longer required by Carers...

[The Association suggests that such temporary accommodation require] a renewal issued... on a yearly basis (as with our Motel Registrations)...
13. The Council on the Ageing (A.C.T.) Inc. stated its support for 'the provision of care by the family' but drew attention to what it termed 'the planning problem':

The planning problem is one of implementing appropriate controls that facilitate the provision of care and yet do not impinge on others in the community in undesirable ways.

14. The Council outlined the following specific instances of the 'planning problem':

- the draft Variation, in providing no definition of 'care', might be interpreted 'too narrowly' as applying only to 'medical care'. The Council considers:

The need for emotional and moral support, as well as physical and medical support, should also be valid justification of the need for care. For example, a family should not be excluded from caring for an older member who is significantly concerned about the risks of fall or assault when living alone.

- the draft Variation does not define 'family'. The Council considers that:

the nature of the care is the important criteria rather than the closeness of familial relationship. A generous approach is needed when substantial care is being provided.

- there is need to develop 'guidelines for handling situations of extended absences... prior to implementing this planning change'. The Council asked:

If the dwelling is vacant for an extended period, will changes to the dwelling be required. For example, if the inhabitant is in hospital or a nursing home and there is uncertainty as to their return.

- the full cost of removing a 'relocatable unit should be 'transparent' to an applicant and be considered by the approving authority. Also:

[I]n the event of the sale of a property the new owners [should] be fully aware of any constraints, obligations and costs associated with the temporary dwelling. Procedures need to be fully implemented to ensure that the purchaser of the property is fully aware of their obligations. In addition, it is desirable for the property, including the transferable unit, to be able to be purchased by a family who is intending to undertake a similar caring role.

- there appear to be problems in 'technical' matters relating to car parking and size of dwelling:

The requirement for the habitable suite to have a parking space appears curious. As the suite will be incorporated into the house when the caring period finishes, the requirement for additional parking appears to be temporary while the structure is permanent and the number of inhabitants may not be altered.

[In relation to the size of the dwellings] the maximum size of the habitable suite is a function of the size of the original dwelling. Thus, the smaller the house then the smaller the extension that is allowed. This appears to place an inappropriate burden on those with smaller houses. The impact of this constraint is also likely to be greatest in the older areas of Canberra which, on average, have both smaller houses and a higher concentration of older people.

An alternative approach may be to use the 'maximum gross floor area of 70m square' as the limit for both 'Habitable suites and Relocatable dwellings.

- the enforcement mechanism appears inadequate. The Council stated:

There is significant concern as to the strength of the statutory declaration as a means of ensuring appropriate initial approval and timely removal or combining of dwellings.

[The Council] believes that a stronger approach, possibly including periodic reaffirmation, is necessary for both approval and continued use of the dwelling...

With the exception of the statutory declaration, the [draft] Variation does not appear to incorporate any additional mechanisms for ensuring compliance, or penalties in the case of non-compliance. Since the proposal gives concessions, compared with those for general residential land usage, it may be appropriate to incorporate more stringent mechanisms to ensure compliance.

15. Mr Knyvett stated:

[W]e fear that a temporary dwelling once up will be permanent. And that is the core of the problem and the concern...

Information about how some local government authorities provide for dependant person housing

16. The [former] A.C.T. Planning Authority provided information about provisions applying to dependent person housing in some local government areas of Victoria and Queensland. The information included the following:

- the City of Croyden in Victoria defines a dwelling occupied by a dependent in terms of floor size ('not greater than 65 square metres'). The Council specifies site coverage, setbacks, single storey height limit, open space and car parking requirements;

- the Knox City Council in Victoria has a special policy for 'Movable Unit', including requiring that such a unit 'shall only be occupied by a dependent relative(s) of the owner/applicant';
- Brisbane City Council (and some other Queensland Councils) have a special policy for 'Cabin Accommodation' that includes the following:

[Definition of "Cabin"] - A relocatable building used or intended for use as a dwelling unit adjacent to a dwelling house where the dwelling unit is occupied or intended to be occupied by an aged or infirm person/s who is under the care of a relative/s who resides in the said dwelling house...

[Definition of "Aged relatives"] - The owner's or owner's spouse's parents, grandparents, brothers or sisters. Provided that female relatives shall be at least 60 years old and male relatives shall be at least 65 years old...

[Definition of "Infirm relatives"] - The owner's or owner's spouse's parents, grandparents, brothers or sisters or sons or daughters irrespective of age, who are in receipt of a Commonwealth invalid pension or who are certified by a medical practitioner as being not medically or psychologically fit to live alone...

The maximum floor area of the Cabin to be 50 sq.m and shall contain not more than one bedroom (in circumstances where two occupants require separate sleeping areas, two bedrooms will be allowed and dispensation of the maximum floor area considered on merit)...

The combined buildings [that is, Cabin and associated residential building] will be considered as a single dwelling unit...

The relative's accommodation is to be located in such a position so as in the opinion of the Building Surveyor, not to adversely affect the amenity or likely amenity of the neighbourhood.

[The] structure is to be removed at the owners cost at such time when it is no longer required for habitation for the aged and/or infirm relative/s.

A bond is to be entered into with the Council and a security deposit or bank guarantee be lodged to the value of \$300 to ensure that the granny cabin is removed when it is no longer required for the approved purpose disconnected and sealed to the satisfaction of the council, the security deposit will be refunded to the applicant...

The applicant shall be required to make a Statutory Declaration stating... [that] the cabin accommodation will not at any time be used or occupied other than to provide accommodation for the said aged and/or infirm relative/s [and] that the owner accepts all costs associated with the removal of the cabin from the site ...

The Building Surveyor shall cause the premises to be inspected annually to determine whether the aged and or infirm relative's accommodation is being occupied in accordance with the provisions of the approval...

The aged and or infirm relative's accommodation may not be rented as a dwelling unit.

The Committee's view

17. The Committee is concerned about some of the definitions and guidelines in the proposal as it currently stands.

18. Further, the Committee is concerned about the capacity to enforce the lease conditions applying to each "Habitable suite" and "Relocatable unit" that is approved.

19. The Committee is conscious that Government officials have experienced problems in enforcing lease conditions in various parts of Canberra. In recent times, the Committee itself has drawn attention to problems in Kingston and to potential problems in the proposed redevelopment of the old Drive-In site at north Watson.

20. The Committee considers that the Government should provide more information about how it intends to ensure the draft Variation is effectively administered.

21. In addition, the Committee expresses its disappointment about the quality of supplementary information provided to it by officials, following the Committee's request for information about how local governments in Australia deal with provisions for 'temporary care accommodation'.

22. The Committee observes that the A.C.T. Government deals with both State type issues and issues that, elsewhere in Australia, are handled by municipal government. Therefore, it is important that officials of the Administration keep abreast of both sorts of planning issues. It seems to the Committee that local government in Australia may provide many more examples of how the issue of 'temporary care accommodation' is handled than the few examples provided to the Committee.

Recommendation

23. The Committee is not prepared to endorse the draft Variation to the Territory Plan (No.55): 'Residential Land Use Policies - Provisions for Temporary Care Accommodation ' until the Government provides greater detail on the following matters:

- the detailed arrangements by which Lease Conditions will be enforced in the future;
- some examples of how terms like 'care, family ' and 'dependent' will be interpreted;
- how the Government intends to deal with situations of extended absences of the 'dependent' person(s);
- how the Government intends to deal with the situation where a property with 'temporary care accommodation ' is sold;
- whether a maximum floor area should be specified for 'temporary care accommodation ';
- whether the proposed car parking arrangements for a "Habitable suite " are appropriate; and
- other issues set out in the body of this report.

Postscript

24. 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.

25. 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.

26. If a Variation is not rejected by the Assembly, the Planning & Land Management Group of the Department of Urban Services (the former A.C.T. Planning Authority) will publish a notice in the *Gazette* specifying the date of commencement of the Variation.

27. The Committee notes that the presentation of this report satisfies the statutory obligation for 'an appropriate committee ' of the Legislative Assembly to report on each draft

Variation. It is open to the Minister for Environment, Land and Planning - when responding to this report - to provide answers to the matters raised by the Committee. The Legislative Assembly will then be in a position to determine whether the draft Variation should be endorsed or not.

Michael Moore MLA

Chair

29 November 1996