

Draft Variation No 174 to the Territory Plan

Hungarian-Australian Club site and Community Facility Land

Report No 4

Standing Committee on Planning and Environment

May 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: Maureen Weeks

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

2.10. The committee recommends that blocks 14 and 15 of section 124 be omitted from Draft Variation No 174 and be retained as “Community Facility Land”.

Recommendation 2

2.11. The committee recommends that PALM consult with the local community concerning the best use of the site (blocks 14 and 15 of section 124) within the current land use policy.

Recommendation 3

2.17. The committee recommends that the Entertainment, Accommodation and Leisure Land Use policy be retained for blocks 2 and 3 of section 124, Narrabundah, and that the Government proceed no further with Draft Variation No 174.

Recommendation 4

2.24. The committee recommends that the Government review the operation of all pre self-government leases within the context of the *Land (Planning and Environment) Act 1991*.

1. Introduction

The *Land (Planning and Environment) Act 1991*

1.1. The *Land (Planning and Environment) Act 1991* (the Land Act) provides for a Territory Plan to “set out the planning principles and policies”¹ to ensure that the planning and development of the Australian Capital Territory provides a “ecologically sustainable, healthy, attractive, safe and efficient environment”² for the people of the Territory. Amongst other features, the Territory Plan (the Plan) includes the land use policies of the Territory and the Land Act places a requirement on development or land use within designated areas to meet the principles prescribed for that land on the Plan.

1.2. Clearly, over time land use requirements will change for some areas and the Land Act sets in place a regime by which the stipulated land use can be altered or varied. Any variation to the Territory Plan is required by the Act to be the subject of community consultation and consideration by a specified 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 undertake this consideration. Until the committee has reported on the matter and the Government has finalised the variation (the approved variation) and presented it to the Assembly³ it is known as a draft plan variation (or draft variation). There can be a number of versions of the draft variation depending on the consultation program. The committee is provided with a draft that will incorporate any amendments resulting from the public consultation program.

1.3. It is the Executive (or Government) that is required by the Land Act to provide committee with the draft variation and the associated papers. The Land 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”⁴. The committee, within its terms of reference and the Assembly’s standing orders, determines the conduct of its inquiry and reports its findings to the Legislative Assembly. These reports inform not only the Government but all Members of the Assembly on the committee’s deliberations and provide a context for the Assembly to consider the Government’s approved variation.

Conduct of Inquiry

1.4. Draft Variation No 174 to the Territory Plan for the Hungarian-Australian Club site and Community facility land at section 124, blocks 2, 3, 14 and 15 Narrabundah was referred by the then Minister for Urban Services to this committee’s

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

² *ibid.*, section 7 (1).

³ The Assembly has five sitting days from the day the Minister presents the variation to consider the variation. If at the end of that time no motion has been moved in relation to the variation it is regarded as approved and is gazetted and becomes part of the Territory Plan (see section 29 of the Land Act).

⁴ *op.cit.*, the Land Act, section 26(2).

predecessor, the Standing Committee on Planning and Urban Services on 11 July 2001. That committee advertised in the local press on 21 and 24 July 2001 inviting public comment on Draft Variation No 174 by 7 August 2001. It received 18 written submissions (see Appendix 1) in response to that invitation and public hearings were held on 14 and 17 August 2001. That committee was unable to finalise its report before the Assembly rose for the October elections and the matter remained in abeyance until the establishment of the Standing Committee on Planning and Environment on 11 December 2001.

1.5. This committee under its resolution of appointment has the use of “the evidence and records of the relevant standing committee appointed during the previous Assembly”⁵ and reviewed this evidence provided to its predecessor as well as the documentation provided by the Minister with the draft variation.

1.6. The committee also wrote on 21 December 2001 to the Minister for Planning seeking to establish the new Government’s intention in relation to the draft variation. The Minister’s initial response indicated that “the Government is currently considering its view on the draft variation referred by the previous Government and will advise you on its position as soon as possible.”⁶ The committee followed the Minister’s response with another letter, dated 23 January 2002 asking for an indication of the Government’s timetable for its consideration of the draft variation. The Minister’s response indicated that the Government would await this committee’s report “before determining its position” and the committee at its meeting of 15 February 2002 received that letter.⁷

⁵ Minutes of Proceedings, No. 2, 11 December 2001, p 13.

⁶ Letter from Minister for Planning, dated 16 January 2002.

⁷ Letter from Minister for Planning, dated 8 February 2002.

2. Draft Variation No 174

2.1. Draft Variation No 174 proposes to vary two different land use policies applying to two adjacent areas of land in Narrabundah to a residential land use policy. One area (section 124, blocks 2 and 3) is currently designated as “Entertainment, Accommodation and Leisure” and is the site of the Hungarian-Australian Club. The existing land use policy on the adjoining area (section 124, blocks 14 and 15) is “Community Facility” and is currently vacant.

2.2. Planning and Land Management (PALM), in accordance with the provisions of the Land Act, released a draft variation for public comment in January 2001 and received 57 written submissions. As a result of this consultation process the draft variation was amended to remove the provision which would have permitted three storey residential development and the variation under consideration by the committee allows a maximum two storey limit. Any residential development, should the land use change be finalised, will still require a Development Application and the associated site analysis and design response report.

2.3. In accordance with the provisions of the Land Act, the consultation process conducted by PALM also included the National Capital Authority, the ACT Heritage Council and the Conservator of Flora and Fauna. The National Capital Authority and ACT Heritage Council raised no issues in relation to the proposed variation. The Conservator of Flora and Fauna was concerned that should the draft variation be approved the Hungarian-Australian Club should cease to operate prior to any residential development of the area due to noise issues. The committee notes that the *Nature Conservation Act 1980* does not appear to require the Conservator to comment on noise pollution issues.

Discussion

2.4. The evidence before the committee, both that provided by PALM’s public consultation program and that taken by its predecessor, suggests that the local community is not united on the amendment of the land use proposed by the draft variation. Further, it is clear that there is very little support for the particular residential development proposal for the site should the draft variation succeed. PALM’s report to the Executive on the public consultation program indicates that it had received 57 submissions of which only 6 supported the proposal⁸. The evidence provided to the committee’s predecessor expresses not only concern about the proposal⁹ but a great deal of frustration about the processes of consultation and for some, the administration of the Land Act¹⁰.

2.5. The committee in considering the Draft Variation agreed that the central issue that needed to be addressed was whether a change in land use to the two sections of land was warranted.

⁸ Report to the ACT Executive on Public Consultation concerning the Draft Variation, Annex C, p 1.

⁹ See for example, Transcript of Proceedings, 14 August 2001, Ms Sewter and Ms Cherry, pp 15-17.

¹⁰ See for example, *ibid.*, Mr Fernandez and Mr Powell, pp 19-24.

Community Facility Land Use

2.6. The smaller area of the site subject to the draft variation is blocks 14 and 15 of section 124 which is zoned as a community facility land use¹¹ and is currently vacant. The inclusion of these two blocks in the proposed variation originated with PALM. The committee's predecessor heard that the PALM, in considering the proposal began to investigate the

potential future use of those sites ... The advice from our social planning area was that those sites were not likely to be required for community purposes.

On that basis, PALM suggested that it would be better to look at this site holistically and look at those two corner blocks as part of the draft variation.¹²

2.7. While PALM considered that there was no foreseeable need or use for the land of blocks 14 and 15 for a community facility and indeed provided a map indicating that there were other more appropriate sites in Narrabundah for any future community facilities, others argued that without a proper needs assessment of the area it was not possible to make that evaluation¹³.

2.8. In questioning by the former committee as to whether the Draft Variation had proceeded without any planning work being done to "assess current or future demand for this type of land"¹⁴, PALM acknowledged that had occurred but it (community facility use) "is very difficult to predict."¹⁵ However, they argued that "While there may not be a documented plan for the entire area of Narrabundah, the consideration as to the appropriate development of this site have certainly reflected the planners' [PALM's] overview of it [the site] within its context."¹⁶

2.9. By PALM's own admission the context for the inclusion of blocks 14 and 15 in the proposed Draft Variation can be questioned. Indeed, the inclusion has been questioned by many in the local community. The committee notes that the inclusion of this area in the Draft Variation does not significantly alter the percentage of community facility land use in the suburb. However, it believes that there is already a significantly low level of this land in the suburb¹⁷. Further, given that there is only 3.3 hectares of "usable vacant land" designated for community facilities land use in

¹¹ The Written Statement to the Territory Plan describes the following land uses for the Community Facility land use: childcare centres, community activity centres and theatre and/or cultural facility, educational establishment, health facility including hospitals and emergency services facilities, veterinary hospital, place of worship or associated religious use, parkland, retirement complex, special care establishment or hostel, or special dwelling and correctional facility

¹² op.cit., Transcript, 14 August 2001, p 2.

¹³ See for example, Transcript of Proceedings, 17 August 2001, Mr Bevada, p 31

¹⁴ op.cit., Transcript, 14 August 2001, p 6.

¹⁵ ibid., p 6.

¹⁶ ibid., p 9.

¹⁷ 3.7 % of the land area of Narrabundah is currently Community Facility Land Use while the adjacent suburbs of Griffith and Red Hill have 8.7% and 7.7% respectively (Figures provided on request to the Committee by PALM on 19 February 2002).

Central Canberra¹⁸ the committee is of the view that the inclusion of blocks 14 and 15 of section 124 cannot be justified.

Recommendation 1

2.10. The committee recommends that blocks 14 and 15 of section 124 be omitted from Draft Variation No 174 and be retained as “Community Facility Land”.

Recommendation 2

2.11. The committee recommends that PALM consult with the local community concerning the best use of the site (blocks 14 and 15 of section 124) within the current land use policy.

Entertainment, Accommodation and Leisure Land Use

2.12. The remainder of the area subject to the Draft Variation is classified as Entertainment, Accommodation and Leisure Land Use¹⁹ and is currently occupied by the Hungarian-Australian Club and disused bowling greens.

2.13. PALM’s view that the land use policy warranted amendment seems to focus on the existing facility – the Hungarian-Australian Club. It questioned the viability of a club²⁰ as well as the suitability of the site for that activity particularly given its location next to a school and in a predominantly residential area²¹. They indicated that there were noise complaint and traffic issues. The proposition was offered that if the Club became more successful those issues would be exacerbated for the neighbourhood²² and queried whether the site was able to support a larger club²³. Further, it was noted that there were a number of other clubs operating successfully in the suburb and that a residential land use policy would be more in keeping with the neighbourhood and rejuvenate the area²⁴.

2.14. The views expressed by others question this view of the Draft Variation and the existing facility. The committee’s predecessor heard evidence that suggested that the viability of the current Club did not forecast the success or failure of any other

¹⁸ Explanatory Statement – Draft Variation to the Territory Plan (No. 164) – Community Facility Land Use Policies Proposed Changes, July 2001, p 2.

¹⁹ The Written Statement to the Territory Plan describes the following land uses for Entertainment, Accommodation and Leisure Land Use: aquatic recreation facility, car park, caravan park, camping ground, hotel, motel, or guest house, club, drink establishment or restaurant, drive-in facility, shop, TAB, craft workshop, tourist or zoological facility, indoor or outdoor recreation facility, indoor entertainment facility or transport facility, parkland or place of assembly.

²⁰ op.cit., Annex C, p 13

²¹ op.cit., Transcript 17 August 2001, p 66.

²² ibid.

²³ op.cit., Annex C, p 13.

²⁴ op.cit., Transcript, 17 August 2001, p 68.

club on the site²⁵ and that the noise complaint issue need not feature. Alternate proposals for development within the current land use policy were suggested²⁶ with the hope that this would revitalise the area. It was also argued that a residential land use policy would not necessarily be in keeping with the neighbourhood, particularly if the developer's proposal was implemented²⁷. Again, some considered that the development proposal would not necessarily rejuvenate the schools and businesses in the area²⁸.

2.15. The committee's responsibility is to "report on the draft plan to the Legislative Assembly"²⁹. The central question it must therefore address is whether the land use policy should be changed. Although the viability of the current Club has been offered by some as evidence that the current land use is inappropriate and countered by others, the question of whether the current Club is in fact viable is one that the committee cannot and should not address.

2.16. The committee is of the view that given the variety of uses for land available under the terms of the Entertainment, Accommodation and Leisure Land Use policy it is difficult to support an argument based on the existing use of the site. Further it supports the view expressed that a "significant change to land use policy"³⁰ should be justified. The committee regards this proposed change, given its loss of amenity to the area, as significant and does not believe that it has been justified. The committee, therefore, does not support the proposed land use change.

Recommendation 3

2.17. The committee recommends that the Entertainment, Accommodation and Leisure Land Use policy be retained for blocks 2 and 3 of section 124, Narrabundah, and that the Government proceed no further with Draft Variation No 174.

The "Concessional" Lease

2.18. The committee has a further comment to make in relation to the issue of the lease of blocks 2 and 3 of section 124 held by the Hungarian-Australian Club. Part of the site was originally leased in 1961 to the Kingston-Narrabundah RSL Club and an additional block was added in 1963. It was granted at less than market value (a concessional lease) under the relevant law – the Leases (Special Purposes) Ordinance 1925-1943. The Hungarian-Australian Club purchased the lease from the Kingston-Narrabundah RSL Club in 1983 for \$420,000.

²⁵ See for example op.cit., Transcript, 14 August 2001, Ms McCarron-Benson and Mr Keeley, pp 24 to 26.

²⁶ op.cit., Transcript 17 August 2001, Mr Bevanda, p 32.

²⁷ op.cit., Transcript, 14 August 2001, Ms Sewter, p 16.

²⁸ ibid., p 33

²⁹ The Land Act, section 25.

³⁰ ibid., p 30

2.19. The fact that the lease was initially purchased at less than market value coupled with the development proposal has clouded the central question as to whether the change in land use proposed by the Draft Variation is justified. It has, as the evidence suggests, lead to a view held by some that the Draft Variation process has been used to ensure a specified outcome³¹ and that those who will benefit from a successful variation to the land use will not be the community³². At issue seems to be a concern that the land is being sold on or transferred to another organisation with an agreement that a different land use policy will apply allowing the owners of that land and the development industry “to negotiate some deal for themselves”³³.

2.20. The Hungarian-Australian Club acquired the lease prior to self-government under Commonwealth legislation with that legislation determining the context for the terms of the lease. After self-government the Territory determined its own law in relation to land and leasing but initially the Ordinances of the Territory became the statute book. In 1991 the City Area Leases Act was amended to recognise the existence of concessional leases and provided a means by which the concessional status of the lease could be discharged. This was a forerunner to the provisions of the *Land (Planning and Environment Act 1991* and the associated regulations.

2.21. It is not always clear in leases granted prior to self-government whether they are concessional leases as the provisions of the disallowable instruments made under the relevant sections of the Land Act (sections 161, 163 and 164) were not applied (as they did not exist) in the granting of them. Although section 25 of the *Land (Planning and Environment) (Consequential Provisions) Act 1991* provides that “a lease is taken to have been granted under the land act. You cannot exercise a power of grant that did not exist at the time the lease was granted, ...”³⁴ Consequently section 163 of the Land Act prohibiting the transfer of leases granted under that section should not be applied to the lease granted to the Hungarian-Australian Club. However, in the context of the Hungarian-Australian Club lease, the committee notes that clause 1(j) of the lease provides that the lessee must “not to assign or transfer this lease without the consent of the Minister³⁵”. The Minister could refuse to give consent to the transfer. However, a transfer of the lease without a concurrent land use change would mean that the current residential development proposal could not proceed as the provisions of section 8 of the Land Act would required any development application to be refused.

2.22. Some suggested that the Hungarian-Australian Club should surrender the lease if they no longer required it³⁶. While section 124 of the Land Act does make provision for leases to be surrendered, on conditions that are set by the Minister, the committee’s predecessor was informed that “There was no law in the ACT requiring a

³¹ see for example 14 August 2001, Mr Powell, pp 22-23 and 33 and 17 August 2001, Mr Lynch pp 43-45.

³² op.cit. 14 August 2001, pp 22-23 and 31

³³ op.cit., 14 August 2001, p 22.

³⁴ op.cit., 17 August 2001, p 71.

³⁵ Copy of lease from Register of Titles (Register Book Vol 85, Folio 83).

³⁶ Submission 18, p 6.

lessee to surrender their lease or to pay out the concessional status of that lease.”³⁷ and that “it has never been standard practice here”³⁸.

2.23. The committee is of the view that the community concerns expressed in the evidence to the committee’s predecessor highlight a need for all planning processes to be open and transparent. Clearly there is a real problem in the operation of pre self-government leases in the context of the current Land Act. The absence of a clear policy to discern which of the pre-self-government leases meet the conditions necessary to have it considered in the context of concessional leases for the purposes for the Land Act contributes to a perception that the process is open to “deals”. Further, the absence of such a policy compounds any confusion that may emerge in any attempts by current leaseholders to disengage from the lease while at the same time maintain their financial position.

Recommendation 4

2.24. The committee recommends that the Government review the operation of all pre self-government leases within the context of the *Land (Planning and Environment) Act 1991*.

³⁷ op.cit., 17 August 2001, p 72.

³⁸ ibid..

3. Conclusion

3.1. The committee regrets the time that has been involved in this stage of the Draft Variation process. Acknowledging the time taken by the election period, the committee believes that its task was complicated due to the strong views held by the both the local and business communities. The intensity of the views held by some, together with the investment of time and money and other financial concerns have clouded the arguments put before the committee's predecessor. The responsibilities of this committee seemed, at least in the minds of some, to have been set aside and the committee presented with a *fait accompli*.

3.2. The committee believes that the process demonstrates many of the perceived problems in planning in the Territory – the developer's involvement, PALM's initiative to include the Community Facility land of section 124, blocks 14 and 15 and the possible sale of a lease that is considered by many to be a concessional lease and should therefore be returned to the community. In this context the committee hopes that the Government's initiative to develop a strategic framework for planning in the Territory will ensure that the community no longer feels that their interests are sidelined in the planning process.

3.3. The committee, in considering the draft variation looked at the arguments for the justification of changing the land use policies and weighed them against the community's interests. It concluded that the current land use policy should prevail and has made recommendations accordingly. It is aware and hopes that the community is as aware that these recommendations have been made to an Assembly with a new Government and the Government's only statutory responsibility in relation to this matter is to have regard to the committee's recommendations in making any decision to approve the draft variation.

Vicki Dunne
Chair
10 May 2002

Appendix 1 – List of Submissions to the Standing Committee on Planning and Urban Services (Fourth Assembly)

Submission No	Individual or Organisation
1	GD & HR Winter
2	Mr George Miller
3	Mr Barry Maloney
4	Ms Alison Sewter
5	Mr Noel Mc Kay
6	Mr Eric Green
7	Mr Jim Whittle
8	Mr John Keeley
9	Mr A Payne
10	Ms Rachel Nelson
11	Ms Anne Forrest - Manuka LAPAC
12	Mr Austin Lynch
13	Mr Tony Magers
14	Mr Rik Allen
15	Ms Lalage Cherry
16	Mr Terry Oldfeild
17	Mr M Traynor
18	Ms Julie Mc Carron-Benson

