



Legislative Assembly for the Australian Capital Territory

Draft Variation to the Territory Plan No.109:

Residential Land Use Policies -

Area Specific Policies No.B11 and No.B12

North Canberra

and

Appendix III.3 Urban Housing Code

Report No.23 of the Standing Committee on Urban Services

April 1999

On 28 April 1998 the Legislative Assembly for the Australian Capital Territory resolved to establish a general purpose standing committee, called the Standing Committee on Urban Services, to inquire into and report on:

planning and lease management, road and transport services, housing and housing assistance, government purchasing and public utilities purchasing, electricity industry and regulation, construction industry policy, parks and forests, private sector employment inspectorate, building services, environment, heritage and municipal services and any other matter under the responsibility of the portfolio minister.

Also on the same day, the Legislative Assembly resolved:

If the Assembly is not sitting when the Standing Committee on Urban Services 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, circulation and publication.

Minutes of Proceedings (Fourth Assembly) No.2, 28 April 1998

Committee Membership

Mr Harold Hird MLA (Chair)

Mr Dave Rugendyke MLA (Deputy Chair)

Mr Simon Corbell MLA (appointed on 25 June 1998, replacing
Mr Wayne Berry MLA)

Secretary: Mr Rod Power

Background

1. Section 25 of the *Land (Planning and Environment) Act 1991* requires the government to refer each 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.

2. Section 26 of the Land Act states that ‘the Executive shall have regard to any recommendations’ of the appropriate Assembly committee. The Standing Committee on Urban Services is the appropriate committee in the Fourth Assembly.

3. On 7 December 1998 the Minister for Urban Services, Mr Smyth MLA, referred to this committee the draft Variation and background papers relating to draft Variation No.109: *Residential Land Use Policies - Area Specific Policies No.B11 and No.B12 North Canberra*, and *Appendix III.3 Urban Housing Code*.

The draft Variation

4. The draft Variation proposes to amend the Territory Plan Map and the *Residential Land Use Policies* in the Territory Plan Written Statement by providing for two new Area Specific Policies in that part of the B1 area of north Canberra that is outside the Northbourne Avenue and Ainslie Avenue corridors (see following page for a map of the affected areas).

5. Area B11 would involve ‘urban housing (generally three storeys)’ and Area B12 would involve ‘urban housing (maximum two storeys)’. In addition, development within these areas would be subject to the provisions of a new Design and Siting Code (which replaces the *Multi-Dwelling Design and Siting Code* at Appendix III.2 of the Territory Plan).

6. The draft Variation contains specific controls on building heights, plot ratio [0.8 in Area B11, and 0.65 in Area B12], staging of development, and use of section master plans.

Section master plans

7. The concept of a section master plan was introduced in an earlier version of this draft Variation (No.82, released in 1997). In considering that draft Variation, this committee’s predecessor recommended that the concept be refined before it was implemented.¹ The ACT government accepted this recommendation.

8. On 10 July 1998 the government issued a direction to the Planning Authority in relation to section master plans:

¹ Report No.39 of the Standing Committee on Planning and Environment *Revised Draft Variation to the Territory Plan No.82: Proposed Area Specific Policy B11 and B12 North Canberra and Appendix III.3 Urban Housing Code* November 1997

The Direction considered that the concept of Master Plans, as a tool for providing coordination and guidance for planning and development proposals, had merit and therefore required that:

1. Where the Territory Plan makes reference to a Master Plan the Authority will, if it determines that an approved Master Plan is required, cause that Master Plan to be prepared.
2. A Master Plan is to be approved by the Minister.
3. The Authority is to prepare a Practice Direction for the drafting, notification and approval of Master Plans.
4. The Authority is to ensure that all Master Plans, and any Practice Direction referred to in paragraph 3 of this Direction, are available for public inspection...²

9. The subsequent Practice Direction (dated 31 July 1998) requires PALM to determine the extent of consultation to take place before preparing a section master plan, to advise lessees of a *draft* master plan, to invite public comment on the draft master plan and then to revise the draft in light of that public comment, and to submit the draft master plan to the Minister for approval.

10. Draft Variation No.109 states that section master plans must identify:

- the relationship to any relevant existing community value statement adopted by a community advisory group on planning which has been established by the Minister
- any elements of existing urban fabric, streetscape or landscape which warrant protection or consideration including the specific character of the section and its surrounding streets and impacts on traffic and parking; and
- the preferred pattern of any redevelopment in terms of form of re-subdivision, orientation and form of new buildings, arrangements for vehicular access and parking, landscaping and built form design themes and staging.

Appendix III.3 Urban Housing Code

11. The draft Variation requires that all proposals for multi-dwelling should 'be in accordance with the Urban Housing Code at Appendix 111.3'. The Code applies to all multi-unit development (two or more dwellings) on blocks within the B11 and B12 areas. It is based on the *Australian Model Code for Residential Development* (AMCORD) released by the Federal Government in November 1995 and endorsed by State and Territory Governments.

12. The Code is intended to encourage:

- a variety of dwelling types to suit the diversity of people's needs;
- site-responsive designs for dwellings which are pleasant to live in and do not impact adversely or unreasonably on neighbours or the surrounding environment; and

² Submission to the Executive recommending approval of draft Variation No.109 (dated 13/11/98)

- innovative contemporary design.

13. The Code groups the design aspects of medium-density residential development into 15 elements covering streetscape and landscape; building appearance and neighbourhood character; courtyard walls; site planning; street setbacks; building envelope and siting; privacy; on-site carparking and access; private open space; communal open space and landscaping; security; design for reduced resource and energy consumption; dwelling entry and interior; site facilities; and housing on traffic routes.

14. Each of these elements contain an Intent, Performance Criteria and Acceptable Standards. The Intent defines the objectives of the element and the desired outcomes. The Performance Criteria provides a basis for judging whether the Intent has been met. Where a proponent considers that a performance Criteria is not relevant, it must demonstrate to PALM that an appropriate alternative solution can satisfy the Intent. The Acceptable Standards are the standards which are considered by PALM to satisfy the relevant Performance Criteria, such that generally no further evidence of performance is required. However, other solutions which would result in an equal or better outcome may still be considered by PALM provided the underlying Performance Criteria are satisfactorily achieved.³

Conduct of the inquiry

15. In early February 1999 the committee placed advertisements in the local media inviting public comment on the draft Variation. The advertisements advised the public that the committee had copies of, and would take into account, the 30 submissions lodged with PALM by members of the public in May and June 1998. The closing date for public comment was 1 March 1999.

16. Submissions were subsequently received from the following persons and organisations:

- Braddon Residents' Association Inc. (Ms Salisbury, honorary secretary)
- Mr R.S.Gilbert
- North Canberra Community Council Inc. (Dr Dickins, honorary secretary)
- Mr J.S.Metcalf
- 13 residents of the south-east precinct of Turner (Ms Anderssen, Ms Lynskey, Mr Maiuto, et al).

17. On 5 March 1999 the committee was briefed, in public, by officers of PALM—who undertook to provide further information requested by the committee.

18. On 26 March 1999 the following persons and organisations addressed the committee:

- *Residents of south-east Turner precinct:* Ms Anderssen, Ms Lynskey and Mr Maiuto

³ Appendix III.3 Urban Housing Code pp3-4

- *North Canberra Community Council Inc. and Turner Residents' Association Inc.:* Ms Kellett (North Canberra Community Council Inc.), Dr Dickins (North Canberra Community Council Inc. and Turner Residents' Association Inc.), Ms Stuart (Turner Residents' Association Inc.) and Mr Chapman (Braddon Residents Association).
- *Housing Industry Association:* Messrs Murray, Zivko and Dowse.

19. On 6 April 1999 the committee heard once more from officers of PALM in relation to the draft Variation. Again, the officers undertook to obtain information requested by the committee.

20. At the request of Turner Residents Association, the committee conducted a further public hearing on 14 April 1999. Those attending were Ms Stuart, Dr Dickins and Ms Kellett. The committee then asked PALM officers to address some outstanding issues of concern to the committee.

Consideration by the committee

21. The committee has carefully considered the oral and written evidence obtained during the inquiry into draft Variation No.109. The committee draws attention to the following points which it sees as important in assessing the appropriateness of the draft Variation:

- because the area affected by the draft Variation has been identified for re-development for a substantial period of time—and because a level of re-development has already occurred—there **is a need** to ensure that this occurs in a way which is sensitive to the existing amenity of the area, taking into account the interest of long-term residents as well as development proponents. *The present uncertainty and confusion is helping no-one: neither residents nor developers nor the city as a whole*
- the interim effect of the current draft Variation will expire on 15 May 1999, at which time the former B1 Area Policy will apply. The committee considers that a reversion to the B1 Policy would provide opportunities for development applications that are clearly no longer acceptable to either the Planning Authority or the community
- the concept of two distinct areas in the former B1 Area is intended to facilitate the gradation of medium density development—from intense multi-unit development along Northbourne Avenue, to somewhat less intense development in the B11 Area (three storeys), lesser development in the B12 Area (two storeys), and then out to the standard residential density of suburban Canberra
- similarly, the concept of staged development is intended to clarify the *timing* of three storey development in the whole area (three storey development in the areas north of Macarthur Avenue and Wakefield Avenue is not permitted until 23.5 hectares of the B11 Area are developed).⁴ PALM expects that this provision will mean that three storey is graded outwards from Civic in a more regulated fashion

⁴ At present, PALM estimates that 4 hectares is developed (PALM officials on 6/4/99)

than would occur under the former B1 Area Policy—in particular, the provision removes the possibility that isolated three storey development will occur in patches through the whole inner north

- the imposition of plot ratios is intended to redress the experience with the B1 Policy, which led to some multi-unit developments exceeding a plot ratio of one. The absence of a plot ratio in the B1 Policy encouraged developers to build right up to the prescribed building envelope [setbacks and height].⁵ This created streetscapes and a density of development which is no longer acceptable to residents or to the Planning Authority
- the former requirement to amalgamate a minimum of three blocks for multi-unit development resulted in developments that dominate a street frontage and have a great sameness (as in Torrens Street, Braddon). Abolition of the requirement for block amalgamations should encourage smaller developments that are less obtrusive. The committee believes that abolition of the requirement should lead to developments consisting of a broader, and more diverse, mix of housing - such as three bedroom apartments or town houses (rather than predominantly one or two bedroom apartments)
- the draft Variation should lessen the severity of the situation where a single house is isolated between denser development on each side. In particular, the provisions of the Urban Housing Code should ensure a better gradation of scale than existed under the B1 Policy
- *the concept of a section master plan is an appropriate mechanism to achieve ‘the appropriate balance between preserving an existing amenity and facilitating redevelopment of one kind or other’.*⁶ While the committee cannot be certain that the concept will deliver all that it is hoped of it, it nonetheless does mark a highly significant breakthrough in bringing the land use provisions of the Territory Plan down to a more local level
- it also appears to be an appropriate mechanism for distinguishing between the amenity of one section (such as that in south-east Turner, some of whose local residents appeared before the committee) and that of other areas of the same suburb (such as those residents of Turner who wish to preserve detached residences on existing blocks)
- in relation to the interaction of a section master plan and the Urban Housing Code, the committee views the latter as the benchmark for good design; and that the Code should only be over-ridden by a section master plan where the overall design outcome is of a higher standard than would otherwise be achieved by strict application of the Code. The committee notes that both the consultation process and the notification process (see below) should work in concert with the Urban Housing Code – rather than against it⁷

⁵ PALM officials on 5/3/99

⁶ Report No.39 of the Standing Committee on Planning and Environment *Revised Draft Variation to the Territory Plan No.82: Proposed Area Specific Policy B11 and B12 North Canberra and Appendix III.3 Urban Housing Code* November 1997

⁷ Mr Collett on 6/4/99

- it is entirely appropriate that the Minister has directed that section master plans address the relationship between the plan and any relevant existing community value statement that has been adopted by a community advisory group
- under the Minister's direction, it is not lawful for PALM to approve a development application in B11 and B12 *unless* there is an approved section master plan for that area
- the extent of consultation required to produce a section master plan is of concern to resident associations. *The committee considers that the legitimacy of the consultation process would be aided if PALM produced a document outlining the manner in which the consultation process should take place.* This document should be freely available to the public. The committee is aware that PALM is required to consult the residents of each section and they be notified of the intention to prepare a section master plan; and that when it has been completed, it be notified as would be the case with a Development Application⁸
- the first section master plan has been developed (for section 59 in Braddon). It shows careful attention to the specific features of the site and - among other matters - includes useful site diagrams about the section's structural elements, landscape structure, traffic flows, existing and proposed subdivision patterns, existing vegetation, proposed planting, existing and proposed vehicle access. The committee notes that it suggests the front setback provisions in one part of the section should be less than that prescribed by the Code [4.5m rather than 6m]. The rationale for this change is to maximise the sunlit area which happens to be at the rear of the blocks (due to the fact that they face south). This is an interesting example of where a strict interpretation of the Code would not optimise residential amenity *in this particular instance*
- a further 13 section master plans are being prepared—these are in areas where PALM anticipates development pressure or where residents are pressing for a section master plan (as in the residential area adjoining McKay Gardens in Turner)⁹
- it is entirely appropriate that a section master plan can be initiated by requests from residents as well as by requests by developers
- the overshadowing provision of the Code has been strengthened beyond what it was in the earlier draft Variation—by stipulating that there should be no greater overshadowing of an adjoining property than exists before the redevelopment takes place. This reflects the particular climatic conditions of Canberra.

Recommendation

22. In light of these points, and after carefully considering all the evidence put before it, the committee recommends:

- ***that draft Variation No.109 relating to Residential Land Use Policies - Area Specific Policies No.B11 and No.B12 North Canberra be endorsed.***

⁸ Mr Collett on 6/4/99

⁹ PALM officials on 5/3/99

23. Further, the committee recommends:

- ***that Appendix III.3 Urban Housing Code be endorsed, with the addition of the word 'blocks' in Element 6 (A6.6.3) 'Building Envelope and Siting'—which would then read: 'The applicant demonstrates through a series of shadow diagrams that the proposed development does not increase the overshadowing of adjacent detached residential dwelling blocks...'***

24. As noted above, the committee also considers it would be useful if PALM produced a document outlining the manner in which the consultation process on section master plans should take place. This document should be freely available to the public.

25. The committee recommends:

- ***that PALM prepare a document, to be freely available to the public, that sets out the manner in which it will handle the consultation process in relation to section master plans.***

26. The committee is extremely concerned about whether PALM has the capacity, with its existing level of resources, to manage the new and very important addition to its work that is associated with section master plans. Both residents' groups and the Housing Industry Association consider that PALM, at present, is not resourced well enough to allow this to happen.¹⁰ It is vitally important that the preparation of these plans proceed quickly yet carefully, especially given the need for PALM to be alert to the possible conflict of interest involved in a situation where the same person or firm (as a consultant) prepared a section master plan and then prepared the actual development plans.

27. The committee recommends:

- ***that PALM be provided with extra resources to ensure that the additional work associated with the preparation and management of section master plans is performed quickly, efficiently and to a high planning standard - and by appropriately qualified and experienced personnel.***

28. The committee—like everyone else involved in planning in Canberra—appreciates that the proposed Variation and associated Urban Housing Code, involving the preparation of section master plans, is a new development that will take some time to bed down. As the responsible committee of the ACT parliament charged with overseeing planning matters, the Standing Committee on Urban Services intends to keep a watching brief on the way in which the Variation is implemented. The committee would appreciate regular updates by the Minister.

¹⁰ Housing Industry Association on 26/3/99

29. The committee recommends:

- ***that the Standing Committee on Urban Services be provided with regular updates by the Minister on the manner in which the proposed Variation is implemented; and that a fuller assessment be provided to the committee in six months time (that is, by November 1999).***

30. The committee was disturbed by evidence provided during the inquiry involving cases of apparent harassment of local residents by persons acting for developers—who may have misled residents about the nature of multi-unit development and about the alleged sale of properties adjoining or near those residents.

31. The committee considers that this sort of behaviour is wholly offensive.

32. The committee recommends:

- ***that the government ensure relevant professional bodies (such as those covering real estate agents) are reminded of the need to control and discipline their members, especially in relation to their behaviour in areas that might be experiencing pressure for some sort of re-development.***

Appreciation

33. The committee is aware that the nature of appropriate planning controls in inner north Canberra was considered by the committee's predecessor in the last Assembly (the Standing Committee on Planning and Environment), as well as by the Assembly itself. The issue has been in the political realm for a long time. Successive ACT governments have adjusted their policies in light of this political interest.

34. The present committee deeply appreciates the degree of involvement of local residents over the years, along with the involvement of business and industry groups. *In particular, the committee wishes to record its appreciation to those who participated in the present inquiry.*

35. Also, the committee wishes to place on record its appreciation for the work of PALM officers, especially those who appeared before the committee to outline the nature of the draft Variation and the background to its preparation. The professionalism of these officers—Mr Calnan, Mr Collett and Ms Graham—was a credit to the Planning Authority and to the ACT public service.

Postscript

36. The *Land (Planning and Environment) Act 1991* requires the ACT 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.

37. 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.

38. If a Variation is not rejected by the Assembly, the ACT 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.

Harold Hird MLA

Chair

16 April 1999