

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

*DRAFT VARIATION TO THE TERRITORY PLAN
FOR
LYNEHAM SECTION 67 BLOCK 1 PART (YOWANI GOLF CLUB)*

**REPORT NO.1
OF THE
STANDING COMMITTEE ON PLANNING AND ENVIRONMENT**

MAY 1995

STANDING COMMITTEE ON PLANNING AND ENVIRONMENT

On 9 March 1995 (at the commencement of the Third Assembly) the Legislative Assembly established a Standing Committee on Planning and Environment ‘to examine matters related to planning, land management, transport, economic development, commercial development, industrial and residential development, infrastructure and capital works, science and technology, the environment, conservation, heritage, energy and resources’.

Further, the Legislative Assembly resolved 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’.

Committee Membership

Mr Michael Moore MLA (Chair)
Mr Wayne Berry MLA (Deputy Chair)
Ms Lucy Horodny MLA
Mr Trevor Kaine 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. In May 1995 the Minister for the Environment, Land and Planning, Mr Gary Humphries MLA, referred the draft Variation and background papers relating to Lyneham Section 67 Block 1 Part (Yowani Golf Club) to the committee. The Minister's covering letter is reproduced as Appendix A to this report.

3. The purpose of the Variation is to vary the existing Land Use Policy for part of the Yowani Golf Club from "Restricted Access Recreation" to "Residential". The draft Variation would enable the development of a maximum of 210 dwellings in buildings up to three storeys in height, with access to these houses being from Ellenborough Street, North Lyneham. The land affected would be subject to the 'defined land' provisions of the *Land (Planning and Environment) Act 1991* [Section 7(3)(e)], which prescribes that 'principles and policies' for the land's development are to be set out. Appendix B contains a map of the area and lists these development principles and policies.

4. The Minister's letter to this committee notes that the proposal was referred in November 1994 to this committee's precursor (the Standing Committee on Planning, Development and Infrastructure). That committee concluded that it was unable to proceed with considering the draft Variation in the short time available before the forthcoming ACT election [held on 18 February 1995]. In particular, the Standing Committee on Planning, Development and Infrastructure expressed concern about the significance of the site for the nationally vulnerable striped legless lizard (*Delmar impar*) and the impact of the proposal on traffic management issues in the area.¹

5. The Minister's letter also referred to the fact that the previous Minister (Mr Bill Wood MLA), in considering the Preliminary Assessment, had sought further assessment of the traffic impacts, especially investigating alternative access arrangements; and that 'there was also a requirement to test a suspected waste dump to establish the exact nature, extent and implications of the dump and any associated contamination'.

6. The latest draft Variation papers update these matters. In relation to the legless lizard and to native grasslands, a consultant's report to the proponents [dated January 1995] found:

Lowland native grasslands in the ACT are considered to be threatened ecosystems due to the widespread modification

¹ *Draft Variation to the Territory Plan for Lyneham Section 67 Block 1 part (Yowani Golf Club)*
Report No.32 of the Standing Committee on Planning, Development and Infrastructure (November 1994)

that has occurred as a result of agricultural practices and urban expansion. From a vegetation perspective the introduced tussock grassland in the study area is of little conservation significance. It is not a native grassland and contains few native species...

From the perspective of reptile and amphibian conservation there are no significant constraints on the proposal to develop part of the Yowani Golf Course. No endangered or vulnerable species, including the striped Legless Lizard (*D.impar*) were captured or observed in the study area

7. In relation to the contamination potential of the site, a report prepared for Yowani Golf Club [April 1995] found that:

previous agricultural grazing and golf course land uses on the subject site have been such as to have no practical scope for contamination of the proposed development area. With the exception of the most recent fill mound, the fill stockpiles and spoil heaps have originated on the site and therefore have minimal opportunity for contamination.

The sources of fill for the most recent mound have negligible to no potential for contamination, and do not warrant further investigation.

Overall, it is concluded that there is no evidence to support concern about site contamination...

8. In relation to traffic matters, an additional traffic assessment prepared for the proponents [dated April 1995] found that 'traffic on Ellenborough Street has remained at a similar level over the past two or three years, particularly in the AM peak; [that] there is little evidence of any traffic growth on Ginninderra Drive; and [that] traffic on Cossington Smith (south) was underestimated in previous analyses'. The consultant's report concluded that the original access arrangements were 'the best and most cost effective solution' but that the Cossington Smith (south) option 'is possibly the only other viable option of those reviewed'.

9. The committee notes that the Planning Authority has chosen the Cossington Smith (south) option after reviewing the traffic aspects of the proposal. The draft Variation states:

As a result of the traffic assessment work, the Development Principles and Policies Section of the draft Variation document has been revised as follows:

- the requirement for the signalisation of the existing "T" intersection of Ellenborough Street and Cossington Smith Crescent (South) replaces the previous requirement for right turn storage lanes at that intersection; and

- the requirement for a continuous median island in Ellenborough Street between the proposed access road to the development and Cossington Smith Crescent (South) has been deleted in order to encourage pedestrians and cyclists to use the much safer option of crossing at the proposed signalised intersection.

Consideration by the Committee

10. Continuing the practice of the former Standing Committee on Planning, Development and Infrastructure, the committee requested copies of each submission made to the ACT Planning Authority when it advertised for public comment on the draft Variation at an earlier stage of the consultation process. The committee took the matters raised in these submissions into account as it deliberated on the draft Variation.

11. These submissions give the committee an insight into matters of concern to the community. In the committee's view, such submissions - as a matter of course - should accompany future draft Variations referred to this committee.

12. The committee held a public hearing on the draft Variation on Friday 12 May 1995 when it was addressed by an official of the Planning Authority and by the proponents (AusPacific Corporation and Purdon & Associates). The committee requested further information on the status of private roads within residential estates in the ACT and the willingness of the proponent to consider some public housing within the development. The proponent's subsequent advice to the committee on each matter was as follows:

there are a considerable number of developments in the ACT which have private roads. They range from small to large and vary from aged persons villages to individual estates... The matter has been discussed with the Lease Administration Branch as well as one of Canberra's largest strata unit managers. They are both satisfied with the operation and maintenance of the roads can be adequately incorporated within existing Strata Titles Legislation...

[Following discussions between the proponent and the ACT Housing Trust, the proponent advised the Committee that] the ACT Housing Trust's interest would depend on price, demand at the time and funds availability. Their interest would be limited to a small number of units only.

We are not opposed to the purchase of units in the proposed development by the ACT Housing Trust assuming that any purchase is based on the estate's market prices at the time of purchase.

13. The committee notes there is no impediment to the Housing Trust buying into the proposed estate if it wants to. The committee considers that the long established practice of encouraging a mix of private and public housing in Canberra's suburbs is a

sound one and is relevant to developments such as the Yowani proposal. In passing, the committee notes that the average proportion of public housing to the total housing stock in Canberra suburbs is said to be about 12 per cent, which seems an appropriate level.

14. The committee also expressed concern that the nature of the proposed development might give the impression of a 'gated community' withdrawn from the wider community which is denied pedestrian and vehicular access. Advice from the ACT Planning Authority on this matter was:

the existing lease clause providing for public access across the golf course would be carried into the golf course lease and also extended to the proposed residential lease.

15. The committee notes this requirement for public access over the site. The committee received assurances from both the proponents and government officials that a 'gated community' would not be permitted on the site. The committee is not content to rely solely on such assurances and considers that this matter should be specifically identified in the lease of the site.

16. A further public hearing was held on Friday 19 May 1995 when the committee heard from representatives of the North Canberra Community Council. These representatives expressed concern about the planning, lease and financial aspects of the proposed development. In relation to planning, the representatives were particularly concerned about the increased traffic on Mouat Street likely to be associated with the development (especially with respect to the Brigalow Street intersection). The committee considers that this concern is warranted (see later in this report).

17. In relation to leasing and financial matters, the representatives stated that the current lease of the golf course was issued under the Leases Ordinance which provides for the land to be withdrawn by the government whenever it is required for a public purpose. The representatives stated that the lease was granted for less than full market value and suggested that the ACT Government treat the land as raw undeveloped land (as for rural leases).

18. Mr Dunstone for the North Canberra Community Council expressed concern that the Golf Club would significantly benefit from the proposal at the expense of the wider community. He considered that the 'development rights' belonged to the ACT community rather than to the current lease holder. He asked: 'Would you maximise the return to the public lease holder by allowing this development to occur now... or should you wait ten years and get [a] higher benefit because the land would be more valuable then?'²

19. Mr Dunstone suggested that the ACT Government and this Committee should be given formal advice by officials about a range of ways 'to maximise the return to the public sector who own the land', including withdrawing the lease and then auctioning it to the highest bidder or sharing the development rights with the Club or

² *Transcript of proceedings, Friday 19 May 1995 p28*

giving the Club ‘the development rights and pay betterment’.³ Mr Dunstone expressed his view that ‘in terms of a financial return to the ACT, the best option would be for the ACT to withdraw the part of the lease which the golf club has said it does not use... and to auction that site’⁴ - while noting that reasonable compensation for the improvements made to date would be payable.

20. In response to these comments, a member of the committee observed that the golf club would be entitled to withdraw the present development proposal if it wished and continue with the present usage. This would mean that Canberra would not obtain the benefit of increased residential accommodation and would not obtain any income beyond the annual rental presently payable by the club.⁵ On the other hand, it would also be possible for the Government to resume this portion of the lease and auction it.

21. The committee is aware that the issue of whether concessional lease holders should be allowed to develop all or part of their lease has a long history in the ACT - and that significant public controversy has occurred in the past. The committee notes that successive ACT Administrations have not disallowed the practice and that the current matter before the committee is not contrary to past government policies.

22. In the committee’s view, there is an urgent need to review the policy on renewing concessional leases in order to ensure that the community does not lose important public revenue and options for land development.

23. The committee is aware that such a review of broad policy should not be used to delay or reject consideration of the specific draft Variation now before the committee - which accords with current government policy. It would be improper to assess this particular proposal on the basis of other than existing policy.

24. The committee requested details of the lease and was informed by government officials that the concessional lease was issued in 1954 and extended in 1987 for a period of 97 years. The committee asked officials to check whether the lease extension was, in effect, a new lease; and was advised that this was not the case. This advice was contained in the following note from Lease Administration Branch of the Department of the Environment, Land and Planning:

The original lease commenced on 1 September 1954 for a term of 50 years. A new lease was granted in 1987 to vary the term of that lease for 99 years. Subregulation 14(10) of the *Land (Planning and Environment) Regulations* provides:

Where a prescribed lease has been granted in substitution for a surrendered lease for the purpose of-

(a) varying the term of the surrendered lease;

³ *ibid* p31

⁴ *ibid* p32

⁵ *ibid* p33

(b) correcting an error in the surrendered lease; or

(c) subdividing the land comprised in the surrendered lease into parcels of land held under leases having the same purposes as those of the surrendered lease;

for the purpose of determining the period since the grant of the prescribed lease, that period shall be taken to have commenced on the date of the grant of the surrendered lease.”

Accordingly, the date for calculating the remission applicable on the lease variation application is based on the date of the grant of the surrendered lease which is 1954. The appropriate remission rate is 50 percent as per Schedule 3 of the Land Act Regulations.

25. The committee considers that this situation shows up the weakness of the existing legislation and policy. It means that betterment on the proposed development will be calculated at the rate of 50 percent rather than at (or near) 100 percent.

26. The committee expresses some concern that the broader community is still not receiving the full benefit of changes in the value of such leases. In this case, officials advised the committee that, on 1994 values, the betterment payable is reduced by an amount of approximately \$2.5million. This is revenue that, under a different policy regime, might have been available to the Government for wide community uses.

27. A final public hearing occurred on Friday 26 May 1995 when the committee heard from a citizen concerned about traffic aspects of the proposal. Mr Connor told the committee that, in his view, ‘the traffic infrastructure along Ellenborough Street cannot sustain additional traffic feeding into from further residential development’. He stated that the ‘attempts to better the traffic flow at the Ginninderra Drive intersection... [have been] band-aid measures’ and that the ‘Southwell Park-Yowani area is ‘a planning disaster’. Mr Connor concluded that the Yowani proposal should be rejected ‘until such time as the traffic infrastructure problems are resolved’.⁶

28. The committee was told by government officials that the original intention to extend Ginninderra Drive to Northbourne Avenue was ruled out by the Commonwealth Government and was not a decision of ACT authorities. The effect of the decision is to heighten the need to upgrade Mouat Street to handle a greater volume of traffic than it was designed for. The committee sees this need as urgent.

29. In relation to the Planning Authority’s revised requirements for traffic lights at Cossington Smith Crescent (South), the committee was told by government officials that the proponents would be required to pay a percentage of the cost of the light’s installation. This partial financial contribution would mean that traffic lights could be installed earlier than they might otherwise.

⁶ Supplementary material provided to the committee by Mr Connor, 26 May 1995

30. There are at least three aspects of this traffic lights matter that concern the committee. The first is that government officials would allow the partial financial contribution to the cost of lights by a developer to 'jump the queue' in the list of priority sites for traffic lights developed by the government.

31. The second matter of concern is the requirement that the developer pay only a proportion of the cost of the lights. It seems to the committee that, if the Planning Authority now considers traffic lights are an essential requirement for the proposal to proceed, then the cost of those lights should be borne wholly by the proponent. To do otherwise, is to effectively 'subsidise' the development by the broad Canberra community.

32. The third matter of concern is the limited nature of the traffic investigations so far made in relation to this proposal. In an earlier paragraph, the committee quoted a consultant's finding that traffic on Ginninderra Drive has not grown in recent times. The committee points out that significant residential redevelopment is occurring in West Belconnen which might be expected to impact on this road in the near future. More importantly, it seems to the committee that the draft Variation papers do not address the broad context in which this proposal should be viewed. With respect to traffic matters, this broad context must of necessity address the present traffic problems of the area.

33. Similarly, the broad context of leasing issues arising out of this draft Variation are not addressed in the paperwork. It seems to the committee that the officials who framed the draft Variation have concentrated upon the specifics of the proposal to the detriment of the wider context.

34. The committee considers this illustrates the crying need for a broad strategic planning overlay to ACT planning legislation and to the Territory Plan so that the Government and public can readily appreciate where one-off developments such as the one currently before the committee may be placed. The committee gives notice that it will be moving to ensure that such a broad strategic view of planning is prepared.

35. During its consideration of the draft Variation, the committee became concerned about a general planning matter arising out of the proposed development. This concerns the effect of an 'infill' project of this type on the overall amount of green space in a community. As the amount of golf course green space is reduced for residential purposes, the proportion of green space available to the Lyneham and north Canberra community will drop. While the effect may not be serious in this instance, the committee is conscious of the possibility of incremental reductions in green space to the point where the public may have less green space than is desirable or that is provided for in the Territory Plan. The committee expects the Planning Authority to carefully monitor the effect of similar proposals in the future

36. Transcripts of the public hearings may be sighted in the Committee Office of the Legislative Assembly and will be finalised in the near future for mailing out to interested persons.

37. The Committee deliberated in private session on Friday 26 May 1995 and resolved on the nature of this report.

38. In passing, the Committee observes that the layout of the draft Variation papers does not facilitate easy understanding of the complex issues raised in considering this draft Variation. The Committee is aware that the legislation stipulates a large number of annexures to the formal submission by the Planning Authority to the ACT Executive; these are listed in Appendix C to this report. It would assist the Committee if these annexures were identified by a tab and if page numbers were placed in each annexure.

Recommendation

39. *The Committee endorses the draft Variation for Lyneham Section 67 Block 1 Part (Yowani Golf Club) subject to:*

- in relation to lease matters:

- *that the lease on the site stipulate that pedestrian and vehicle access will be open to the public at all times, and that a 'gated community' will not be permitted;*

- in relation to traffic matters:

- *significant improvements being made to the Ellenborough Street/Barton Highway intersection to facilitate the movement of traffic into and out of Kaleen, preferably via the Barton Highway (in order to lessen traffic flow on Ellenborough Street)*
- *Mouat Street to be widened to its intersection with Northbourne Avenue in order to improve the present traffic problems of the area*
- *both of the above works to be funded out of the Government's 1995-1996 Capital Works Program*
- *the developer to meet the whole cost of traffic lights at Ellenborough Street/Cossington Street (south); the committee noting, however, that the priority for such lights might drop in light of the above road works to the extent that the Planning Authority considers the lights are no longer needed.*

40. *The Committee recommends that the ACT Planning Authority provide the committee with a copy of all submissions it receives on draft Variations, and that these submissions be provided at the time the draft Variation papers are referred to the committee.*

41. *The Committee recommends that the ACT Planning Authority facilitate understanding of the bulky paperwork associated with draft Variations by arranging*

for tabs to be placed between annexures in future draft Variations, and by page numbering within the annexures.

42. *The Committee recommends that the Government urgently review the policy on renewing concessional leases in order to ensure that the community does not lose important public revenue and options for land development.*

Postscript

43. The *Land (Planning and Environment) Act 1991* requires the ACT Executive to have regard to the recommendations of the appropriate committee of the Legislative Assembly before approving any 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.

44. 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.

45. If a Variation is not rejected by the Assembly, the ACT Planning Authority will publish a notice in the *Gazette* specifying the date of commencement of the Variation.

Michael Moore MLA
Chair

26 May 1995