



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

Draft Variation to the Territory Plan No 263: Block 23
Section 117 Kaleen and Minor Amendments to Community
Facility Land Use Policies

MAY 2007

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Resolution of appointment

On 7 December 2004 the ACT Legislative Assembly agreed to establish general purpose standing committees. The Assembly resolved that:

- (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:

...

- (e) a Standing Committee on Planning and Environment to examine matters related to planning, public works and land management, conservation and heritage, transport services, and environment and ecological sustainability.

...

The Assembly also agreed that if the Assembly is not sitting when the Standing Committee on Planning and Environment had completed consideration of a report on draft plan variations or draft plans of management referred to the Committee by the Minister under 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, publication and circulation.¹

Terms of reference

Section 25 of the *Land (Planning and Environment) Act 1991* (ACT) states:

The Minister 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 section 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.

¹ Legislative Assembly of the ACT, *Minutes of Proceedings*, No 2–7 December 2004, pp12–16

Preface

Both Federal and ACT law and policy governs planning in the ACT. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth)² establishes the National Capital Authority, which prepares and administers the National Capital Plan. The Act also enables the Legislative Assembly to establish a statutory planning authority – now the ACT Planning and Land Authority – to develop and implement the Territory Plan. The *Land (Planning and Environment) Act 1991* (ACT)³ (the Act) requires the Territory Plan to set out the planning principles and policies for giving effect to its object,⁴ which is:

to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an ecologically sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.⁵

The Plan includes both a written statement and a map. The written statement contains general planning principles (Part A), specific land use policies (Part B), overlay provisions (Part C) and definitions of terms (Part D). The Territory Plan map shows which land use policies and overlays in the written statement apply to particular sections of land in the Territory. The Territory Plan is developed and implemented taking account of other strategic ACT Government policy documents such as *The Canberra Plan* and *People Place Prosperity: A Policy for Sustainability in the ACT*.⁶

Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. The ACT Planning and Land Authority prepares these for stakeholder comment. There can be a number of versions of a draft variation depending on the consultation program.

² Accessible at

<<http://www.comlaw.gov.au/ComLaw/legislation/actcompilation1.nsf/browseview?openform&VIEW=current&ORDER=bytitle&CATEGORY=actcompilation-Au>>

³ Accessible at <<http://www.legislation.act.gov.au/a/1991-100/current/pdf/1991-100.pdf>>

⁴ Land (Planning and Environment) Act 1991, sub-section 7(2))

⁵ Land (Planning and Environment) Act 1991, sub-section 7(1)

⁶ Accessible at <<http://www.cmd.act.gov.au/canberraplan/>> and <<http://www.sustainability.act.gov.au/policy.html>>

The Minister is required by the Act to refer each draft variation, within 28 days of receiving it, to an appropriate committee of the Assembly – currently the Standing Committee on Planning and Environment – for consideration and report.⁷ The Minister is required to have regard to the Committee’s recommendations before approving the proposed variation and tabling it in the Assembly (see below), or returning it to the ACT Planning and Land Authority with written directions for further action.⁸

The Territory, the Executive, a Minister or a Territory authority must not do or approve anything that is inconsistent with the Territory Plan, or the proposed draft variation, in relation to land that is subject to a draft variation, for the duration of the relevant period specified in the Act.⁹

Following the Committee’s tabling of its report in the Legislative Assembly, the Minister must take the findings of the committee into account before making his decision in relation to the draft plan variation.¹⁰ If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.¹¹ Unless wholly or partially disallowed by the Assembly on a motion for which notice has been given within five sitting days, the variation will commence on the date nominated by the Minister.

⁷ Land (Planning and Environment) Act 1991, section 25

⁸ Land (Planning and Environment) Act 1991, paragraphs 26(1)(a) and (b), sub-section 26(2)

⁹ Land (Planning and Environment) Act 1991, section 9

¹⁰ Land (Planning and Environment) Act 1991, sub-section 26(2)

¹¹ Land (Planning and Environment) Act 1991, section 29

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

2.15 The Committee recommends that the proposed reference to Section Master Plan in the re-numbered 3.4 Performance Controls in Community Facility Land Use Policy in DV263 be omitted.

RECOMMENDATION 2

2.19 The Committee recommends that the Planning and Land Authority ensure that the disruption likely to be caused to residents of The Huntington and the school community at Kaleen High School, during and after the construction of the proposed new community facility, is minimised.

RECOMMENDATION 3

2.20 The Committee recommends that the Planning and Land Authority require that all buildings on Block 23 Section 117 be built in such a way as to achieve an acceptable noise environment for people working in, living in, or visiting the site. This may require the Authority to require the developer to meet the criteria set out in appropriate Australian Standards as amended from time to time, such as AS/NZ 2107 'Recommended Design Sound Levels and Reverberation Times for Building Interiors' [AS/NZ 2107 – 2000], and AS 3671 'Acoustics – Road Traffic Noise – Building Siting and Construction' [AS 3671 – 1989].

RECOMMENDATION 4

2.21 The Committee recommends that the Planning and Land Authority ensure that the concerns expressed by the Kaleen High School Board about the potential adverse impacts of possible overshadowing be addressed and that regulatory measures be explained carefully to, and discussed with, appropriate representatives of the Kaleen High School community.

RECOMMENDATION 5

2.26 The Committee recommends that the Minister for Planning encourage the development of partnerships between the proposed development on Block 23 Section 117 Kaleen, the Kaleen High School, and if possible, residents of The Huntington.

RECOMMENDATION 6

2.27 The Committee recommends that the ACT Planning and Land Authority pay particular attention to planning for pedestrian and cyclist movement around Kaleen High School, Block 23, The Huntington, and access points into the proposed suburb of Lawson.

RECOMMENDATION 7

2.39 The Committee recommends that the Planning and Development Bill 2006 be amended to require the Planning and Land Authority to prepare a Planning Report for each proposal:

- that would have the effect of depleting the range of land available for community use or recreational facilities within an area;
- when an application is made to vary a concessional lease either by paying it out or transferring it or changing the lease purpose;
- where there is a development application for specified uses on land within a Community Facility Zone under the Territory Plan
- where there is a development application for a community facility in zones other than Community Facility Zone
- in relation to proposals for the direct grant of land for a community use
- where there is a proposal to vary the land use policy from Community Facility Zone

RECOMMENDATION 8

2.40 The Committee recommends that the Minister ensure that all future Community Needs Assessments and Planning Reports be made publicly available as soon as practicable after completion.

RECOMMENDATION 9

2.41 The Committee recommends that all Planning and Development Reports be referred upon completion to the inter-department committee with responsibility for the development of policy and rules to support future grants and administration of concessional leases.

RECOMMENDATION 10

2.42 The Committee recommends that this proposed variation to the Territory Plan proceed.

1 INTRODUCTION

- 1.1 This proposed variation to the Territory Plan, No 263 – Change of Land Use Policy for Block 23 Section 117 Kaleen and Minor Amendments to Community Facility Land Use Policies Referral (DV263), has two aims:
- to change the land use policy applicable to Block 23 Section 117, Kaleen, from Restricted Access Recreation, to Community Facility Land Use Policy; and
 - to make minor amendments to the Community Facility Land Use Policy in the Territory Plan.
- 1.2 Each will be examined in turn.
- 1.3 As the Committee was invited by the former Minister for Planning, Mr Simon Corbell MLA, to consider whether it might conduct its own inquiry into the Draft Restructured Territory Plan which is currently open for community consultation, the Committee also takes this opportunity to examine DV263 in view of some of the proposed new Territory Plan provisions.

Block 23 Section 117 Kaleen

- 1.4 Block 23 Section 117 is shown in [Figure 1](#). It is about 16 315m² in size, and appears to have had some excavation work done on part of the site. Apart from one shed-type building (a club house), the site has mainly patchy ground-layer grass and weedy vegetation. It is about 3.5km from the Belconnen Town Centre and about 400m from the Kaleen Group Centre. The eastern side of the block has Urban Open Space. Detached houses are about 60m from the site. Kaleen High School and playing fields, and The Huntington residential apartments are adjacent to the site.
- 1.5 Kaleen High School has been operating on Block 1, Section 101 Kaleen for about 30 years, and offers a specialised agricultural program in the Science Faculty, both for Kaleen students and visiting students.¹² Its agriculture plot borders Block 23 Section 117. The 1.6 hectare plot includes gardens, including permaculture beds; small animals such as poultry; medium size animals such

¹² Submission No 4

as goats and sheep; and large animals such as horses, alpacas, and weaner calves.¹³

- 1.6 According to information provided by the Planning and Land Authority,¹⁴ the lease for the Kaleen High School is an 'Executive Lease' which provides for any use permissible under the Territory Plan. Provision is made in the Territory Plan for ancillary uses. The agricultural and animal care activities on the site would be regarded as ancillary to the use of the land for an education facility which is a permissible use under the Territory Plan. In 2006 Kaleen High School applied for a development application and was granted approval for the construction of feed storage sheds and poultry sheds.

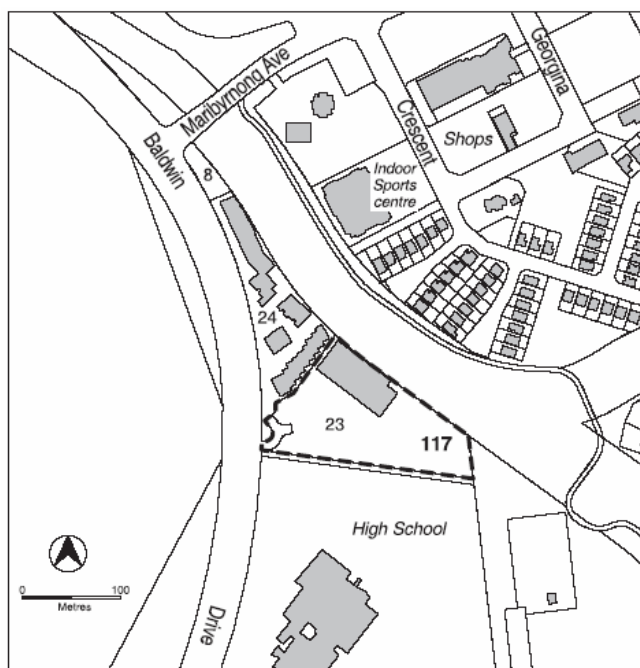


Figure 1: Map showing Block 23 Section 117 Kaleen in 2007¹⁵

- 1.7 In 1986, before self-government, the Canberra and District Bocce Club Inc was granted a concessional lease for Block 18 Kaleen, on which the club developed bocce courts and a club house. The club applied for and was granted additional land in 1989 (Block 14 Section 117 Kaleen). The club surrendered

¹³ Submission No 4

¹⁴ Advice provided by the Planning and Land Authority to the Committee dated 15 May 2007

¹⁵ Figure reproduced from ACT Planning and Land Authority, *Recommended Final Variation to the Territory Plan No. 263: Change of Land Use Policy for Block 23 Section 117 Kaleen and Minor Amendments to Community Facility Land Use Policies*, February 2007, p4

their original lease and the site was extended and leased back to the club 'for a new club house, additional courts and car parking'. The amalgamated block became Block 20.¹⁶

- 1.8 In 1991, the Club applied to subdivide the land to build multi unit residential on part of the block and to sell these units to fund a new club building. A variation of the Territory Plan was approved in 1994 to change the land use policy applicable to the part block (which is currently known as Block 24 – Huntington Apartments) to Residential. The proposal, supported by the then Minister Mr Bill Wood MLA, was considered by the ACT Legislative Assembly's then Standing Committee on Planning, Development and Infrastructure in 1994.¹⁷
- 1.9 The then-Committee made various recommendations which were aimed primarily at improving the design and habitability of the proposed residential development and its aesthetics. The Committee also noted:
- the site was not suitable for active recreational uses such as those associated with an oval, due to its small size and gradient; and
 - the betterment charge of 100% on the change of land use, of about \$974 000, would exceed the value of the lease if it was returned to the Government and subsequently auctioned at its then estimated value of about \$500 000.¹⁸
- 1.10 The club paid out the concessional lease in 1995. Copies of submissions to and provided by the Planning and Land Authority to the Committee for the purposes of this inquiry state that due to an incorrect calculation of the betterment tax payable \$661 000 was paid, with about \$140 000 lost to ACT revenue due to a miscalculation following legislative amendments. This was

¹⁶ Legislative Assembly for the ACT, *Standing Committee on Planning, Development and Infrastructure, Draft variation to the Territory Plan, Kaleen, section 117, part block 20, Bocce Club: Report No 22*, Canberra, p1 and Attachment 1 to a letter from Mr Paul Room to the Planning and Land Authority, dated 29 September 2006 (Submission No 8) on Authority files

¹⁷ Mr David Lamont (Chair), Mr Tony de Domenico (Deputy Chair), Mr Greg Cornwall, Ms Annette Ellis and Ms Helen Szuty

¹⁸ Legislative Assembly for the ACT, *Standing Committee on Planning, Development and Infrastructure, Draft variation to the Territory Plan, Kaleen, section 117, part block 20, Bocce Club: Report No 22*, Canberra; See also : Legislative Assembly for the ACT, 1997 Week 12 Hansard (11 November), p3912

still more than the estimated value of the lease however.¹⁹

- 1.11 In 1994 the Committee had also recommended that the lease holder, the Bocce Club, develop the site for its proposed additional sporting facilities, and 'the Government require the present lease holder to show a commitment to the maintenance and upkeep of the area to an appropriate standard' and 'in a timely fashion'. This appears not to have occurred.
- 1.12 The Bocce Club sold the site to Baldwin Developments (ACT) Pty Limited in 2006 as 'indoor recreational facility for bocce and petanque courts and ancillary uses'. Baldwin Developments now has a lease over Block 23, until 28 September 2085. In February 2005 Purdon Associates completed a planning study for the site on behalf of Baldwin Developments.²⁰ Baldwin Developments notes in its submission that there has been no suggestion that the Bocce Club held defective title over the land, although another submission did question the club's claimed membership, financial management, and activities.²¹
- 1.13 The Committee wrote to the Office of Regulatory Services in the Department of Justice and Community Safety (JACS) on 10 May 2007, asking whether the Canberra and District Bocce Club Inc and the Canberra and District Petanque Club Inc had discharged their financial and legal responsibilities under ACT legislation administered by that Office. The Attorney-General has formally advised the Committee that both clubs have discharged their legal and financial responsibilities under relevant legislation.²²
- 1.14 The Planning and Land Authority has advised the Committee that if Baldwin Developments' plans for the site are approved, the company will have to pay a Change of Use Charge (CUC) of 75% of the added value of the lease. This CUC will be calculated before the new lease is issued.²³

¹⁹ See letter from Mr Paul Room to the Planning and Land Authority dated 29 September 2006, Attachment 1 Public Interest Disclosure – Lease Variation Charges.

²⁰ Purdon Associates Pty Ltd 2005, *Kaleen Supportive Housing: Planning Study Report*, Canberra

²¹ Submission No 2

²² Including the *Liquor Act 1975* (ACT), the *Associations Incorporation Act 1991* (ACT) and the *Land Titles Act 1925* (ACT); letter to the Committee Chair from the ACT Attorney-General Mr Simon Corbell MLA, dated 15 May 2007

²³ Information provided on request to the Committee by the Planning and Land Authority, 1 May 2007

- 1.15 This proposed variation to the Territory Plan would replace the land use policy that currently applies to the site – Restricted Access Recreation – with an amended B4 Community Facility Land Use Policy, which would enable supportive housing to be built on the site. Under the policy, all dwellings would have to be designed to meet the relevant Australian Standards for Accessible and Adaptable Housing. AS 4299 (Adaptable Housing) Class C.
- 1.16 ‘Supportive housing’ is defined in the Territory Plan as
residential accommodation for persons in need of support, which is managed by a Territory approved organisation that provides a range of support services such as counselling, domestic assistance and personal care for residents as required. Although such services must be able to be delivered on site, management and preparation may be carried out on site or elsewhere.²⁴
- 1.17 Supportive housing can be in the form of self contained dwellings, aged persons units, community housing, older persons units, a rooming house, or a university college.
- 1.18 The proponent submitted to the Committee that there was ‘a paucity of literature or authoritative sources on supportive housing’²⁵ and apparent misunderstanding amongst some stakeholders about supportive housing. The proponent submitted that while the design of the complex had not been settled it would offer a range of opportunities, including an opportunity to ‘age in place’; assisted living in terms of provision of domestic and personal services and facilities; a sense of community; good accessibility; a diversity of dwellings; privacy; high quality environmental design; choice about level of support; and on site management.²⁶
- 1.19 The Planning and Land Authority said in the draft variation document issued for public consultation that it supported the proposed land use change on the application of the proponent, Baldwin Developments Pty Ltd, for various

²⁴ ACT Department of Urban Services 2002, The Territory Plan Written Statement Vol 1, Part D: Definition of Terms

²⁵ Submission No 3

²⁶ Submission No 3

reasons. These included:²⁷

- that supportive housing would be provided and it could not be strata-titled for general residential use;
- there is growing demand for housing for the aged throughout Canberra and in particular in Belconnen;
- the site meets location criteria for housing development for aged persons; and
- the Bocce Club would be relocated to another site in Belconnen.

1.20 The Authority noted that the site is adjacent to a Residential Land Use Policy area with B7 Area Specific Policy²⁸ and therefore it would require a setback for Community Facility uses.

Part B4 Community Facility Land Use Policies: Territory Plan amendments

1.21 The proposed variation to the Territory Plan will also amend the Territory Plan Written Statement's B4 Community Facility Land Use Policies, once effective. These amendments would:

- insert 'retirement complex' as a permissible use in the Land Use Controls Schedule 1 of Clause 2. The term 'retirement complex' as a permissible use had been removed from Schedule 1 as a result of Variation No 164 as it was technically redundant. However, the Authority recommends it be re-inserted as it is a commonly used and understood term to refer to a development which includes supportive housing and residential care accommodation;
- further amend Schedule 1 of Clause 2, by adding a footnote to include 'minor uses ancillary to the principal use of the land, provided there is no

²⁷ ACT Planning and Land Authority 2006, 'Draft Variation to the Territory Plan No 263: Change of Land Use Policy for Block 23 Section 117 Kaleen and Minor Amendments to Community Facility Land Use Policies', Canberra.

²⁸ Restricting dwellings on the land to 62; the design and siting of buildings to be in accordance with the relevant Design and Siting Code except Performance Measures D1.1, D1.2 and D3.4, and with height controls: See ACT Government 2002, *Territory Plan Written Statement Volume 1*, Area B7: Kaleen – Section 117, Block 24 added in 1994, Variation No 11, p19 of Part B1

conflict with the objectives in section 1'. Similar provisions had been inadvertently removed as a result of Variation No 164;

- amend Clause 3.1 Land Use Restrictions for Emergency services facility, Funeral Parlour, Indoor recreation facility, Outdoor Recreation facility, by replacing sub clause a) with 'a) The site has not been identified by the Authority as being required for community use'.

1.22 Another effect of DV263 will be to place the responsibility for preparing Community Needs Assessments (or equivalent Planning Reports) on the ACT Planning and Land Authority, rather than the development proponent, as is currently the case. Community Needs Assessments, or equivalent Planning Reports, are intended to demonstrate that sufficient land for community use is available in the locality to meet community needs before proposals for some other developments will be considered. The Authority says that it has found this requirement 'to be problematic in practice'.²⁹ The proposed variation will delete Clause 3.4 Community Needs Assessment, and renumber Performance Controls as 3.4. Community Needs Assessments, or equivalent Planning Reports, are to be prepared by the Planning and Land Authority. It does this through the proposed amendment to:

- replace Clause 3.1 Land Use Restrictions for Supportive Housing with:
 - 'Supportive housing
 - May only be permitted where:
 - a) the occupation of individual dwellings in the supportive housing complex is restricted by the lease to persons with special housing needs for reasons of age or disability.
 - b) the site has not been identified by the Authority as being required for community use;
 - c) all dwellings are designed to meet the relevant Australian Standard or Building Code for Adaptable Housing, or other guidelines adopted by the Authority for adaptable housing and the relevant Code in Appendix III; and

²⁹ ACT Planning and Land Authority 2006, *Recommended Final Variation*, p3

d) the land is held as a single undivided parcel. Subdivision of the lease to provide separate title to individual dwellings, including subdivision under the *Unit Titles Act 2001*, shall not be permitted.'

- 1.23 DV263 also proposes to add the following exception to the renumbered Clause 3.4 Performance Controls: 'Unless provided for in an approved Section Master Plan'. This has the effect of having the Performance Controls of building setback and height not apply where there is an approved Section Master Plan.

Possible implication of planning system reforms

- 1.24 DV263 concerns the Community Facility Land Use Policy in the Territory Plan. The proposed new Community Facility Zone in the draft restructured Territory Plan includes objectives which are similar to the current objectives in 'Part B4 of the Territory Plan: Community Facility Land Use Policies', with some differences in presentation. For example the current objective of safeguarding the amenity of surrounding residential areas against unacceptable adverse impacts due to the operation of community facilities, such as traffic, parking, noise, or loss of privacy, is likely to be addressed in the Parking and Vehicular Access Code and is not a zone objective in the new draft Territory Plan.
- 1.25 DV263 proposes that some performance controls in the current Territory Plan for Community Facilities in Clause 3.4 not apply where there is an approved Section Master Plan. This may be addressed in transitional provisions in the planning and development reform package as there will be no Section Master Plans in the Planning and Development Act 2007³⁰ or the restructured Territory Plan. Under the new arrangements, controls in the Community Facility Zone will apply and development applications for community facilities which are residential care accommodation or supportive housing community facilities will be assessed in the merit track. A Precinct Code may be developed to apply additional controls to the proposed development, which would probably be comparable with what would be included in a

³⁰ The Planning and Development Bill 2006 is expected to be passed by the Legislative Assembly in 2007 and to commence operation in September, but delays may occur because of the complexity of the changes

Section Master Plan. As a new Precinct Code is a variation to the Territory Plan, it would be subject to the public consultation processes applicable to those variations.³¹

Statutory consultations

- 1.26 On 14 July 2006 the ACT Planning and Land Authority released DV263 for public comment until 28 August 2006. It was notified on the ACT Legislation Register and a notice was published in *The Canberra Times*. Local newspapers ran stories about the proposed Territory Plan variation in July 2006.³²
- 1.27 In accordance with the *Land (Planning and Environment) Act 1991*, the ACT Planning and Land Authority also sought and considered the views of the National Capital Authority, the ACT Heritage Council and the Conservator of Flora and Fauna.³³
- On 28 September 2006 the National Capital Authority advised that the proposed variation to the land use policy change was not inconsistent with the National Capital Plan.
 - On 6 February 2007 the ACT Heritage Council advised that there were no heritage issues raised by the proposed variation.
 - The Conservator of Flora and Fauna advised that she did not have any issues of concern with the proposed variation.
- 1.28 On 1 June 2005 the Planning and Land Council advised that it agreed with the proposed variation provided adequate support was provided at the accommodation and that a Preliminary Assessment was done.
- 1.29 The Authority received 13 written submissions from members of the public in relation to DV263. The issues raised in submissions to the Authority, and the Authority's response, are summarised in Table 1:

³¹ See Part 5.3 of the Planning and Development Bill 2006

³² ACT Planning and Land Authority, 2007, *Report on Consultation: Draft Variation to the Territory Plan No 263: Change of Land Use Policy for Block 23 Section 117 Kaleen and Minor Amendments to the Community Facility Land Use Policies*, February, p13

³³ ACT Planning and Land Authority 2007, *Report on Consultation*, February

TABLE 1: SUMMARY OF KEY ISSUES AND ACT PLANNING AND LAND AUTHORITY RESPONSES³⁴

Stakeholder comment	Response by the ACT Planning and Land Authority
Aspects of the proposed design are unacceptable	The design detail in the planning study is indicative only and the proponent will be asked to prepare a Section Master Plan to inform the development application. This would be open to public comment.
The proposed development raises many traffic, parking, and safety concerns particularly for pedestrians	Traffic and people movement in the area will be assessed as part of the development assessment process. The need for road works on Baldwin Drive is recognised.
The proposed community facility land use may be incompatible with the adjacent Kaleen High School and is opposed by the School Board	Block 23 meets the ACT Guidelines for Community and Recreation Facilities (1998) but the proponent may need to demonstrate screening to protect neighbours' rights to quiet enjoyment and privacy
Land suitable for recreational activity is being lost in Belconnen and to other clubs, and a community needs assessment should be done	The site is not freely accessible to the public under Restricted Access Land Use Policy. New recreation facilities cannot be built on the site because it is within 5km of the Canberra International Sports and Aquatic Centre (CISAC) and that would be inconsistent with the Deed of Grant and Project Agreement between the ACT and CISAC and there is no evidence of unmet demand by commercial operators. Community groups are unlikely to find the block attractive. Belconnen has unmet need for seniors' housing which ACT Government policies are trying to address. The Territory Plan requires proponents to demonstrate through a community needs assessment that there is sufficient land in the locality to meet anticipated community needs.
More impact assessment work is required	Further planning and assessment work will be done, probably under provisions of the Planning and Development Act 200* (when operational). The Authority is better placed than a proponent to conduct land supply and demand assessments

³⁴ Summarised from ACT Planning and Land Authority 2006, *Report on Consultation*, February

Public consultation has been inadequate	A 6-week consultation period enabled stakeholders to voice their concerns. Leaflets were distributed to houses in the surrounding area
'Retirement complex' should not be permitted in Community Facility Land Use Policy	This is a technical rather than substantive change in policy and it is a commonly used and well-understood term.

- 1.30 Further consultation will occur when the Development Application is lodged with the Authority, and review and appeal mechanisms may be invoked.

Committee consultations

- 1.31 The Minister for Planning, Mr Simon Corbell MLA, referred the final recommended DV263 to the Committee for inquiry and report, by letter dated 6 March 2007.
- 1.32 In 2004 the Planning and Land Authority had released a draft variation to the Territory Plan to amend the Community Facility Land Use Policies. This was: *Final Recommended Draft Variation to the Territory Plan No. 229: Supportive Housing and Adaptable Housing Provisions and Other Minor Amendments*.³⁵ In July 2005 this Committee recommended that the Authority undertake further consultation in relation to that proposed variation, as important stakeholders had raised concerns about matters within their area of expertise and service provision. The Authority undertook further policy development and aspects of this revised proposed variation to the Territory Plan is the result of that further consideration.
- 1.33 On 20 March 2007 the Committee agreed that the closing date for submissions for this inquiry would be 8 May 2007 and that the inquiry should be advertised jointly with the ACTION Buses and Sustainable Transport Plan inquiry. An invitation for submissions was advertised in *The Canberra Times* on Saturday 24 March 2007 and in *The Chronicle* on Tuesday 3 April 2007. A wide range of stakeholders were invited by email and letter to participate in the inquiry.

³⁵ See ACT Legislative Assembly 2005, *Draft Variation to the Territory Plan No. 229: Supportive Housing and Adaptable Housing Provisions and Other Minor Amendments: Report No 29*, Canberra

- 1.34 The Committee notes that as part of the Planning Study done by Purdon and Associates, consultations were held with government agencies, peak organisations and the Kaleen community. Residents and businesses 'in the surrounding area' were invited to a community information session. Notices were hand-delivered to houses and businesses in the area and notices were placed in *The Canberra Times* and the *Chronicle*. The Planning Study states that 'eight people registered their attendance at the information session. Attendees also had the opportunity to complete a questionnaire, although only two completed questionnaires were returned.'³⁶ One submission to the Committee notes however that the submitter had no recollection of having received an invitation to a community information session.³⁷ Another submission expressed concern about the lack of consultation with the Kaleen High School principal and broader school community.³⁸
- 1.35 The Committee received 4 submissions to the inquiry and has considered these carefully along with other relevant material. Contributors who made submissions are listed in Appendix A. The Committee also received correspondence from several residents of The Huntington, the apartments adjacent to the proposed re-development site.³⁹
- 1.36 On 3 April 2007 the Committee visited the site. Officials from the ACT Planning and Land Authority in attendance were Ms Jacqui Lavis, Deputy Chief Planning Executive and Director Planning Services, Planning and Land Authority, and Mr Garrick Calnan, Manager, Planning and Land Policy, Planning and Land Authority. The principal of Kaleen High School, Ms Sue French, also attended.
- 1.37 The Committee thanks all the stakeholders who provided correspondence and submissions to the inquiry. The Committee also thanks the ACT Government officials who provided information and documents promptly in response to Committee requests.

³⁶ Purdon Associates Pty Ltd 2005, Planning Study, p7

³⁷ Submission No 2

³⁸ Submission No 4

³⁹ Letter from four residents of The Huntington, dated 16 August 2006, to the Committee and the Planning and Land Authority

2 COMMITTEE COMMENTS

Block 23 Section 117 Kaleen

- 2.1 Many of the issues raised in correspondence and submissions to the Committee were discussed in earlier studies and processes, although some issues raised were new. Many such concerns were summarised and responded to in the Planning and Land Authority's *Report on Consultation* for the proposed variation, although the Committee is aware that there is dissatisfaction by some residents with the content of the report.⁴⁰ For example, whether there is unmet demand for restricted access recreation land in Kaleen was examined in the 2005 Planning Study. That study noted that there was high demand for indoor basketball and futsal facilities, which then was met by sports clubs using school facilities. The study noted that clubs rarely have the financial capacity to develop their own facilities and are dependent on government support. The Planning Study noted a lack of interest in the site for the development of commercial recreational facilities. It also noted that the site was not well suited for a recreation facility.⁴¹
- 2.2 One submission suggested that the Committee's inquiry was conducted in undue haste.⁴² The timeline noted above does not support this view.
- 2.3 Further studies, discussions and assessments will take place in the course of the development assessment process for the proposed community facility. The Committee is of the view that the Planning and Land Authority should take particular care to fully engage affected stakeholders and to address their concerns if at all possible.
- 2.4 The Committee notes that the proposed variation in relation to Block 23 Section 117 Kaleen meets the policy objectives of the Canberra Spatial Plan and the Canberra Social Plan in relation to urban consolidation and meeting the

⁴⁰ E.g. Subs No 2 & 4

⁴¹ Purdon Associates Pty Ltd 2005, Planning Study, p23

⁴² Submission No 2

needs of Canberra's ageing population. It is also consistent with the ACT Government's Building for Our Ageing Community Strategy.⁴³

- 2.5 Several studies in recent years highlight the need for increased provision of retirement and aged care accommodation, including supportive housing. A 2006 consultant's report commissioned by the Chief Minister's Department states:

Four main drivers underlie increasing demand for retirement accommodation and residential aged care in the ACT over the next two decades: demographic trends, social trends and expectations, affordability and the propensity of older people to move. ... A range of services in the ACT already provides some support in both these areas, but need to be strengthened. The range of current (proposed and underway) developments indicate that the future will be characterized by an increasing mix of providers, an increasing diversity of services, an increasing market for assisted living, increasing interest in accessible and adaptable housing, and increasing recognition of other options that contribute to the full array of retirement accommodation.⁴⁴

- 2.6 This proposed facility responds to the recognised social need for the provision of more accommodation for Canberra's ageing population. As the 2006 consultancy states:

The growth of the population aged 60 and over will far outstrip the growth of the total population in the ACT over the next 20 years. Age 60 is adopted in this report to cover the younger retiree population who need to be included in considerations of planning for the full range of retirement accommodation. Compared to a growth of 14% in the total population projected from 2006 to 2026, the population aged 60 and over will more than double in absolute numbers from 47 440 to 95 791 and as a

⁴³ See <http://www.cmd.act.gov.au/Documents/ageing_community.pdf>

⁴⁴ A. Howe 2006, *Retirement Accommodation and Residential Aged Care in the ACT 2006–2026 Demand and Supply Study: A Report prepared for the Chief Minister's Department of the ACT Government*, <http://www.cmd.act.gov.au/Documents/retirement_accomm&residential_aged_care_study.pdf>, accessed 2 May 2007, p9

share of the total population will increase from 14% to just over 25%.⁴⁵

- 2.7 The Committee notes that the proponent also cited the study by Dr Howe in its submission, and that these views are consistent with research done by the Australian Housing and Urban Research Institute.⁴⁶
- 2.8 The Committee considers that the site is well situated for a community facility/supportive housing because of its proximity to public transport, shops and urban open space, but that the entrance to the proposed facility needs substantial re-design before the construction of the facility begins. The Committee agrees with submissions⁴⁷ and other inquiry documents, that current and future traffic issues on Baldwin Drive, associated with the proposed new community facility, and with access to the neighbouring suburb of Lawson, require detailed and careful analysis before construction work begins. The proponent and the Planning and Land Authority also recognise this.
- 2.9 The Committee does not regard the site as currently well patronised for recreational purposes as it appears to have been in a state of neglect for many years. It is not currently accessible as open space by the general community. Its conversion to supported accommodation is, in the Committee's view, a desirable outcome in terms of social priorities and in view of Kaleen's location in reasonable proximity to a range of other recreational facilities and protected areas.
- 2.10 The Committee has previously endorsed amendments to the Territory Plan Written Statement which are aimed at restricting unit or strata titling to ensure that supportive housing dwellings remain as supportive housing and do not become de-facto residential developments.⁴⁸

⁴⁵ Howe 2006, *Retirement Accommodation and Residential Aged Care in the ACT 2006–2026 Demand and Supply Study*, p14

⁴⁶ Submission No 3

⁴⁷ Submission No 2, 4

⁴⁸ ACT Legislative Assembly, Standing Committee on Planning and Environment 2005, *Draft Variation to the Territory Plan No 229, Supportive Housing and Adaptable Housing Provisions and Other Minor Amendments: Report 13*, Canberra, accessible at
<<http://www.parliament.act.gov.au/committees/index1.asp?committee=55>>

- 2.11 The Committee agrees with the comments made by several agencies consulted by the Planning and Land Authority in relation to DV263, that the concerns expressed by stakeholders in relation to increased traffic and access to The Huntington need to be addressed very carefully in detailed traffic and parking studies. The shared access point to The Huntington and Block 23 is likely to cause inconvenience and safety hazards during the construction phase of the development. Some traffic pressure along Baldwin Drive is likely to be relieved, however, when the Gungahlin Drive Extension has been completed.
- 2.12 The Committee recognises the opposition to the proposal by the Kaleen High School Board, and some of the residents in The Huntington. The Committee recognises that particular care will need to be taken when assessing the development application, so that the agricultural teaching and learning activities currently taking place at Kaleen High School can co-exist well with the proposed community facility.
- 2.13 The Committee considers that attention has to be given to the concerns expressed by the Kaleen High School Board about over-shadowing of the agricultural plot not being acceptable. If the maximum height of the community facility is two storeys in accordance with Community Facility performance controls, this is unlikely to be a concern however.
- 2.14 In view of the expected changes to ACT planning law, the Committee sees no need for DV263 to provide reference to a Section Master Plan. The omission of that reference should have the effect of requiring any community facility on Block 23 Section 117 to have a minimum setback of six metres from the boundary of the block adjacent to The Huntington, and for the maximum height of buildings within 30 metres of The Huntington to be two storeys.

RECOMMENDATION 1

- 2.15 **The Committee recommends that the proposed reference to Section Master Plan in the re-numbered 3.4 Performance Controls in Community Facility Land Use Policy in DV263 be omitted.**

- 2.16 The Kaleen High School Board also expressed concern⁴⁹ about possible future complaints about noise emanating from their agricultural activities, and in particular, from animal noise. The Department of Territory and Municipal Services advised the Committee that the while the school does have a statutory duty to comply with its general environmental duty under section 22 of the *Environment Protection Act 1997* (ACT); noise caused by animals is not covered by the Act. According to the Department:

The Noise Zone Standards which would apply to activities at the site are detailed in Schedule 2 Table 2.1 of the Environment Protection Regulation 2005. (Note: The Act does not cover noise from animals or people.) Currently the school is Community Facility Zone F which takes on the highest adjacent land use, in this case Zone E for Restricted Access Recreation. If the variation is approved this will result in the noise zone standard being reduced to the residential noise standards which are 45/35 dBA rather than the current noise standards which are Zone E of 50/40 dBA.⁵⁰

- 2.17 In order to encourage comfortable and amicable relations between the prospective neighbours, the Committee is of the view that there should be a requirement applied to the community facility development application that it be built with high noise attenuating materials. This should lower the risk of complaints in future about noise emanating from the school's activities. So could the fostering of partnerships between the facility and the school.
- 2.18 The Committee recognises that the construction of the proposed facility is likely to be temporarily very disruptive and probably distressing for residents of The Huntington and the Kaleen High School school community, including the animals in the school's care. Legislation such as *Domestic Animals Act 2000* (ACT), the *Nature Conservation Act 1980* (ACT) and the *Animal Welfare Act 1992* (ACT) is likely to apply to the animals. The Committee recommends that this likelihood be addressed, possibly by requiring the developer to undertake most of the building work over the long school holidays over summer. It may

⁴⁹ Submission No 4

⁵⁰ Information provided by Daniel Walters, Manager, Environment Protection, Department of Territory and Municipal Services.

also require relocating the animals temporarily, and possibly offering residents of The Huntington temporary equivalent accommodation elsewhere.

RECOMMENDATION 2

- 2.19 **The Committee recommends that the Planning and Land Authority ensure that the disruption likely to be caused to residents of The Huntington and the school community at Kaleen High School, during and after the construction of the proposed new community facility, is minimised.**

RECOMMENDATION 3

- 2.20 **The Committee recommends that the Planning and Land Authority require that all buildings on Block 23 Section 117 be built in such a way as to achieve an acceptable noise environment for people working in, living in, or visiting the site. This may require the Authority to require the developer to meet the criteria set out in appropriate Australian Standards as amended from time to time, such as AS/NZ 2107 'Recommended Design Sound Levels and Reverberation Times for Building Interiors' [AS/NZ 2107 – 2000], and AS 3671 'Acoustics – Road Traffic Noise – Building Siting and Construction' [AS 3671 – 1989].**

RECOMMENDATION 4

- 2.21 **The Committee recommends that the Planning and Land Authority ensure that the concerns expressed by the Kaleen High School Board about the potential adverse impacts of possible overshadowing be addressed and that regulatory measures be explained carefully to, and discussed with, appropriate representatives of the Kaleen High School community.**
- 2.22 The Committee does not regard the Kaleen High School and the proposed community facility as necessarily incompatible land uses, but agrees with the Kaleen High School Board that further consultation and negotiation is essential to resolve concerns.
- 2.23 The Committee regrets that it has not heard from stakeholders about the opportunities for new partnerships that this development proposal raises. Other jurisdictions are doing well in this area, and Canberra may also be, but the Committee has not been able to pursue this in the time available for this

inquiry. The Committee is aware that in South Australia, for example, the Helping Hand Aged Care not-for-profit organisation runs an aged-care facility directly adjacent to Parafield Gardens High School and Primary School. The facility provides residential care for more than 100 residents, with 100 staff and 75 volunteers. People aged 5 years to 105 years interact in the Parafield Gardens Learning Centre and Internet café in the foyer of the Parafield Gardens facility. A broad range of positive outcomes and benefits have been reported from this partnership involving intergenerational interaction, the schools, and an internet café.⁵¹ In NSW earlier this year Premier Morris Iemma announced the Premier's Community Service Award which encourages public high school students 'to get involved in community service, learn new skills, foster civic pride and build on the Respect and Responsibility' program.⁵² The Committee considers that this proposed development offers opportunities for partnerships to be developed between the Kaleen High School and the proposed community facility, and possibly the facility and residents of The Huntington, and the broader ACT community.

- 2.24 The Committee does not agree with the view that the land would be better used as a green corridor between Lawson and the Kaleen Group Centre, or offered to other community organisations for community use. However it does recognise that unless there are partnerships developed between neighbours, and unless the needs of pedestrians and cyclists passing through the area are well planned for, tensions are likely to continue in relation to informal thoroughfares and/or trespass through Block 23 and The Huntington.
- 2.25 The Committee welcomes the suggestion that consideration should be given to water recycling on site, involving Kaleen High School, watering systems for the sports ground and the community facility.⁵³ The Committee is aware of the ACT Government's commitment to developing and implementing Water

⁵¹ See generally: Australian government Department of Health and Ageing, 'Case Study 7: Internet Cafe for Lifelong Learning', <<http://www.health.gov.au/internet/wcms/publishing.nsf/e11ffa331b366c54ca2569210006982f/ageing-rescare-clinitfly-case7.htm>>, accessed 14 March 2007

⁵² NSW Department of Education and Training 2007, 'Community services begins at school', 11 February, <<https://www.det.nsw.edu.au/newsroom/yr2007/feb/communityserv.htm>>, accessed April 2007

⁵³ Submission No 4

Sensitive Urban Design Guidelines. These are aimed at reducing the reliance on the town water supply system, optimising the opportunities for the reuse of wastewater (both treated effluent and greywater) and stormwater, and reducing the export of stormwater runoff and associated pollutants to pre-development levels. The Committee expects that these guidelines would be applied to the proposed development.

RECOMMENDATION 5

- 2.26 **The Committee recommends that the Minister for Planning encourage the development of partnerships between the proposed development on Block 23 Section 117 Kaleen, the Kaleen High School, and if possible, residents of The Huntington.**

RECOMMENDATION 6

- 2.27 **The Committee recommends that the ACT Planning and Land Authority pay particular attention to planning for pedestrian and cyclist movement around Kaleen High School, Block 23, The Huntington, and access points into the proposed suburb of Lawson.**

Amendments to Concessional Leases and Community Facility Land Use Policies

- 2.28 Concessional leases in the ACT have been used as a means for granting land at less than market value to support a range of desired social and economic outcomes. The law and policy in the ACT applicable to concessional leases have been under active review in recent years. There have been several other instances where community facilities, initially developed on land granted under concessional leases, were later replaced with residential developments. This has generated opposition from community groups and neighbours concerned about particular developments, who have also criticised the lack of transparency of the 'deconcessionalising' process (i.e. where concessional leases are 'paid out' at market value and become transferable).
- 2.29 For example, in 1999 the Administrative Appeals Tribunal reviewed the transfer of land by the Canberra Lithuanian/Australian Club Inc in Lyneham

to a developer. The appeal was initiated by stakeholders who regarded the site as a community facility.⁵⁴ In 2004 the Tribunal reviewed a change of purpose for community facility land in Narrabundah (formerly the Kingston-Narrabundah RSL Club Inc and the Hungarian Australian Club Ltd). The Tribunal's decision⁵⁵ led to an ACT Government review of the granting and administration of concessional leases in the ACT.⁵⁶

- 2.30 The ACT Government formally responded to the recommendations of the concessional lease review in 2005, and some implementing amendments were made to the *Land (Planning and Environment) Act 1991* (ACT) and the *Land (Planning and Environment) Regulation 1992* (ACT) in 2005.⁵⁷
- 2.31 Further reforms have been incorporated in the Planning and Development Bill 2006, which is expected to be debated in the ACT Legislative Assembly in 2007, and to commence in September 2007. These reforms include, for example, provisions regulating decision-making about the classification of leases as concessional; restricting dealings with concessional leases without the written consent of the Planning and Land Authority; and a formula for working out the amount payable to discharge concessional leases. Extracts of current and proposed legislation are in Appendices B–E. These provisions are not directly in issue in relation to this proposed variation to the Territory Plan as the concessional lease was paid out in 1995, and the lease was sold by Bocce Club to Baldwin Developments in 2006.
- 2.32 The implementation of the Government's response to the *Report on the Granting and Administration of Concessional Leases in the ACT* in the Planning and Development Bill 2006 is a welcome and timely development. It can be expected that more community facility land will face development pressure as the ACT population expands and ages, and there needs to be a clear law and

⁵⁴ Gill, Bette and Minister for Urban Services [1999] ACT AAT 43 (29 November 1999)

⁵⁵ Cherry & Rounds and ACT Planning and Land Authority & Ors/ Old Narrabundah Community Council Inc and ACT Planning and Land Authority & Ors [2004] ACTAAT 36, 24 September 2004

⁵⁶ ACT Planning and Land Authority 2005, *Report on the Granting and Administration of Concessional Leases in the Australian Capital Territory*,

<http://www.actpla.act.gov.au/__data/assets/pdf_file/2180/FinalReport.pdf>, accessed 1 May 2007

⁵⁷ See for example section 159A *Land (Planning and Environment) Act 1991* (ACT) and regulation 10A *Land (Planning and Environment) Regulation 1992* (ACT)

policy framework to deal with this, particularly in view of the changing use for some ACT schools, and the co-location of some community facilities with schools.

- 2.33 The Committee is aware that the Government has agreed in principle to a recommendation in the *Report on the Granting and Administration of Concessional Leases in the ACT* that the Planning and Land Authority undertake a needs assessment of community services in the ACT. The report recommended that this be supported on a whole-of-government basis and that particular attention should be given to the identification of those services which will require support through the grant of concessional leases. The Government response stated:

Agreed in principle.

An inter-departmental committee will be established and work undertaken to develop a whole-of-government policy approach for the development of policy and rules to support future grants and administration of concessional leases, including:

- needs assessment and prioritisation;
- future use of land currently allocated for community facilities;
- criteria and charging policies for the grant of land for community facilities; and
- practical measures to improve the transparency for assistance provided to community organisations through the concessional lease system.⁵⁸

- 2.34 The Committee notes that DV263 proposes that the ACT Planning and Land Authority have the responsibility for preparing any required Community Needs Assessments, or equivalent Planning Report, rather than the proponent. In the Planning and Development Bill there is no reference to Community Needs Assessments, which in any event are not likely to be a commonly

⁵⁸ ACT Planning and Land Authority 2005, *Planning System Reform Project: Report on the Granting and Administration of Concessional Leases in the Australian Capital Territory: Government Response to Report Recommendations*, <http://www.actpla.act.gov.au/__data/assets/pdf_file/2165/concessional-rpt.pdf>, accessed 1 May 2007, p6

required report, but there is reference to 'Planning Reports'. Planning reports are to be prepared by the Authority either at the direction of the Minister, or if the Authority 'is satisfied that it is necessary or convenient to do so in relation to a matter relevant to the object of this Act'. The Bill provides that these reports 'inform a decision to be made under this Act, for example, whether to grant a lease or prepare a variation (other than a major variation) to the territory plan'. A regulation may also prescribe what must be included in a Planning Report.

- 2.35 The Committee agrees that the Planning and Land Authority has the necessary expertise, and well-honed consultative processes both within and outside government, to have responsibility for preparing Community Needs Assessments and/or Planning Reports. The Committee also notes that it is common practice within government to contract out the preparation of detailed studies to consultants as needs arise, and that the Planning and Development Bill 2006 enables the Authority to engage consultants (clause 25).
- 2.36 While the Committee appreciates the need for flexibility in the content of Planning Reports, the Committee is concerned that there is no direction from the legislature as to what a Planning Report should include, and that some current requirements, such as that service providers be consulted, may not be complied with. The prescriptive content for Community Needs Assessments in the current 3.4 Territory Plan is to be deleted by DV263, and the nature of Planning Reports in the new legislation is defined by function rather than content. Although the Territory Plan does not currently include a consultation requirement in relation to Community Needs Assessments, having regard to their importance to the disposition and development of community facility land, a consultation requirement would be desirable.
- 2.37 In its 2006 report on the Planning and Development Bill, the Committee recommended that Planning Reports be made notifiable instruments.⁵⁹ The Government noted this recommendation in its formal response to the Committee's report, but said that notification would be achieved through other means. For example, Planning Reports or Strategic Environmental

⁵⁹ ACT Legislative Assembly, Standing Committee on Planning and Environment, Exposure Draft Planning and Development Bill 2006: Report No 22, Recommendation 38

Assessments undertaken in relation to a Territory Plan variation would be made public as part of the documentation for the variation when the variation is tabled.⁶⁰

- 2.38 In the Committee's view it would be better for Planning Reports to be required to be publicly available early in a proposed change of land use or early in a development application process, so as to inform stakeholder feedback, particularly where a proposal could reduce the land available for community use or recreational activities.⁶¹ This is consistent with the Development Assessment Forum model, where early engagement with policy development is preferred over late-stage interventions. On current proposals, where a concessional lease is to be paid out, or transferred, and a new community facility is proposed which is an emergency services facility, a funeral parlour, an indoor recreation facility or outdoor recreation facility, the report assessing community needs would not necessarily be made public, and service providers would not necessarily be consulted. Under the new planning legislation a new community facility is likely to be assessed in the merit track and while it would be notifiable, it would not necessarily have Planning Reports prepared for them, but rights of review may be available.

RECOMMENDATION 7

- 2.39 **The Committee recommends that the Planning and Development Bill 2006 be amended to require the Planning and Land Authority to prepare a Planning Report for each proposal:**
- **that would have the effect of depleting the range of land available for community use or recreational facilities within an area;**
 - **when an application is made to vary a concessional lease either by paying it out or transferring it or changing the lease purpose;**
 - **where there is a development application for specified uses on land within a Community Facility Zone under the Territory Plan**

⁶⁰ Government response to Planning and Environment Committee Report No. 22 of 2006 'Exposure Draft Planning and Development Bill'

⁶¹ 'Community use' is defined in the current and draft restructured Territory Plan to mean a child care centre, a community activity centre, a community theatre, a cultural facility, an educational establishment, a health facility, a hospital, a place of worship, and/or a religious associated use.

- **where there is a development application for a community facility in zones other than Community Facility Zone**
- **in relation to proposals for the direct grant of land for a community use**
- **where there is a proposal to vary the land use policy from Community Facility Zone**

RECOMMENDATION 8

- 2.40 **The Committee recommends that the Minister ensure that all future Community Needs Assessments and Planning Reports be made publicly available as soon as practicable after completion.**

RECOMMENDATION 9

- 2.41 **The Committee recommends that all Planning and Development Reports be referred upon completion to the inter-department committee with responsibility for the development of policy and rules to support future grants and administration of concessional leases.**

RECOMMENDATION 10

- 2.42 **The Committee recommends that this proposed variation to the Territory Plan proceed.**

Mick Gentleman MLA
Chair
May 2007

APPENDIX A: List of submissions

No 1 – Mr Paul Room

No 2 – Ms Helen Mackerras

No 3 – Mr D Osborne, Director, Baldwin Developments (ACT) Pty Ltd

No 4 – Ms Christine Kallir Preece, Chair, Kaleen High School Board

APPENDIX B: Extracts from the *Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth)*

29 Administration of Territory Land

- (1) The Executive, on behalf of the Commonwealth:
 - (a) has responsibility for the management of Territory Land; and
 - (b) subject to section 9 of the *Seat of Government (Administration) Act 1910*, may grant, dispose of, acquire, hold and administer estates in Territory Land.
- (2) The Executive shall perform its functions under subsection (1) subject to enactment and in accordance with the principles:
 - (a) that new estates in Territory Land shall be granted only in accordance with procedures that are notified to the public; and
 - (b) that appropriate classes of decisions relating to the administration of estates in Territory Land shall be subject to just and timely review without unnecessary formality.
- (3) The term of an estate in Territory Land granted on or after Self-Government Day shall not exceed 99 years or such longer period as is prescribed, but the estate may be renewed.
- (4) The Authority may intervene in any proceedings for review of a decision relating to the administration of an estate in Territory Land.

APPENDIX C: Extracts from the *Land (Planning and Environment) Act 1991 (ACT)*

159A Meaning of *concessional lease* for Act

(1) In this Act:

concessional lease—

- (a) means a lease granted for a consideration less than the full market value of the lease, or for no consideration, if neither of the following payments has been made to the Territory:
 - (i) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;
 - (ii) an amount to reduce the rent payable under the lease to a nominal rent under section 186 (Variation of lease to pay out rent); and
 - (b) includes the following leases:
 - (i) a consolidated or subdivided concessional lease;
 - (ii) a further concessional lease;
 - (iii) a regranted concessional lease; but
 - (c) does not include—
 - (i) a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in paragraph (b); or
 - (ii) a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the commissioner for housing under the *Housing Assistance Act 1987*; or
 - (iii) a lease prescribed by regulation.
- (2) For subsection (1), definition of *concessional lease*, paragraph (a), it does not matter whether the consideration for the grant of the lease was paid as a lump sum or is payable under the lease as rent.
- (3) In this section:
- consolidated or subdivided concessional lease* means a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease.
- further concessional lease* means a further lease if the surrendered lease was a concessional lease.

regranted concessional lease means a regranted lease (whether the regranted is on the same or different conditions) if the surrendered lease was a concessional lease.

Division 5.2 Leases

160A Effect qualified

This division has effect subject to division 5.4 (Restrictions on rural leases).

160B Planning and land authority may grant leases

- (1) The planning and land authority is authorised to grant, on behalf of the Executive, leases that the Executive may grant on behalf of the Commonwealth.
- (2) In this section:
lease means a lease of territory land.

161 Granting of leases

- (1) The planning and land authority may grant a lease by—
 - (a) auction; or
 - (b) tender; or
 - (c) ballot; or
 - (d) direct grant.

Note A fee may be determined under s 287 for this section.

- (2) A lease granted under this section may include provisions—
 - (a) requiring the lessee to develop the land comprised in the lease, or any unleased territory land, in a specified way; or
 - (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.
- (3) The planning and land authority may restrict the people eligible for the grant of a lease under subsection (1) (a), (b) or (c) by specifying, in the relevant notice of auction, tender or ballot, a class of people eligible or ineligible for the grant of a lease under the auction, tender or ballot.
- (4) If, under a restriction imposed under subsection (3), only 1 person is eligible for the grant of a lease under subsection (1) (a), (b) or (c), the planning and land authority may grant a lease to that person under subsection (1) (d) without auctioning the lease, calling tenders or conducting a ballot.
- (5) A lease granted under subsection (1) (d) must be granted subject to the provisions that are agreed between the planning and land authority and the applicant for the lease.

- (6) The planning and land authority must not grant a lease of territory land under subsection (1) (d) otherwise than in accordance with criteria specified under subsection (7).
- (7) The Executive may, for this section, in writing—
 - (a) specify criteria for the granting of leases under subsection (1) (d); or
 - (b) amend or revoke criteria so specified.
- (8) An instrument under subsection (7) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

163 Leases to community organisations

- (1) In this section:
community organisation means a corporation that—
 - (a) has as its principal purpose the provision of a service, or a form of assistance, to people living or working in the ACT; and
 - (b) is not carried on for the pecuniary profit or gain of its members; and
 - (c) does not hold a club licence under the *Liquor Act 1975*.
- (2) The planning and land authority may grant a lease of territory land to a community organisation without charge or for a charge that is less than the market value of the lease.
- (3) The planning and land authority must not grant a lease under this section otherwise than in accordance with criteria for the granting of leases to community organisations specified under subsection (4).
- (4) The Executive may, for this section, in writing—
 - (a) specify criteria for the granting of leases to community organisations; or
 - (b) amend or revoke criteria so specified.
- (5) An instrument under subsection (4) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) A community organisation must not transfer a lease granted under this section and a purported transfer of such a lease is of no effect.
- (7) This section does not limit the power of the planning and land authority to grant a lease of territory land to a community organisation otherwise than under this section.

164 Special leases

- (1) The planning and land authority may grant a lease of territory land for a

charge that is less than the market value of the lease if the authority is satisfied it is desirable and in the public interest to do so to facilitate—

- (a) the economic development of the ACT; or
 - (b) the development of business in the ACT.
- (2) The planning and land authority must not grant a lease of territory land under this section otherwise than in accordance with criteria for the granting of special leases specified under subsection (3).
- (3) The Executive may, for this section, in writing—
- (a) specify criteria for the granting of special leases; or
 - (b) amend or revoke criteria so specified.
- (4) An instrument under subsection (3) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The lessee under a lease to which this section applies must not, for a period of 5 years after the day when the lease is granted—
- (a) assign or transfer the lease; or
 - (b) sublet the land comprised in the lease or any part of it; or
 - (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the planning and land authority and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection is of no effect.

- (6) The planning and land authority must not consent to the lessee under a lease to which this section applies—
- (a) assigning or transferring the lease; or
 - (b) subletting the land comprised in the lease or any part of it; or
 - (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given is a person who satisfies the criteria of eligibility specified under subsection (2) in relation to the class of leases in which the lease is included.

166 Inquiries and assessments in relation to granting of leases

If it is proposed that a lease of territory land be granted, the Minister may—

- (a) establish a panel to conduct an inquiry into whether the proposed lease should be granted; or
- (b) direct that an assessment be made into the possible environmental impact of a decision to grant the lease.

166A Grants of leases after inquiries or assessments

- (1) This section applies if the Minister, under section 166, establishes a panel to conduct an inquiry, or directs that an assessment be made, in relation to the proposed grant of a lease.
- (2) The Minister must—
 - (a) consider the report of the panel or the assessment; and
 - (b) review the provisions of the proposed lease taking the report or assessment into account; and
 - (c) direct the planning and land authority—
 - (i) to grant the proposed lease; or
 - (ii) to grant the proposed lease as varied in accordance with the direction; or
 - (iii) to refuse to grant the proposed lease.
- (3) The planning and land authority may grant the proposed lease only in accordance with a direction of the Minister under subsection (2) (c).

167 Eligibility for certain classes of leases

- (1) The Executive may, in writing—
 - (a) declare a specified class of leases to be leases to which this section applies; or
 - (b) specify, in relation to a class of leases declared under paragraph (a) to be leases to which this section applies, criteria for deciding whether a person is eligible to hold the land comprised in a lease included in that class; or
 - (c) amend or revoke a declaration under paragraph (a) or criteria specified under paragraph (b).
- (2) An instrument under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (3) The planning and land authority must not grant a lease to which this

section applies to a person who does not satisfy the criteria specified under subsection (1) (b) in relation to the class of leases in which the lease is included.

- (4) The validity of a lease to which this section applies is not taken to be affected by a failure to comply with subsection (3).
- (5) The lessee under a lease to which this section applies, or any other person having an interest in such a lease, must not—
 - (a) assign or transfer the lease; or
 - (b) sublet the land comprised in the lease or any part of it; or
 - (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the planning and land authority and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection is of no effect.

- (6) The planning and land authority must not consent to the lessee under a lease to which this section applies, or to any other person having an interest in such a lease—
 - (a) assigning or transferring the lease; or
 - (b) subletting the land comprised in the lease or any part of it; or
 - (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given is a person who satisfies the criteria of eligibility specified under subsection (1) (b) in relation to the class of leases in which the lease is included.

168 Authority need not grant lease

- (1) The planning and land authority need not grant a lease of territory land to an applicant, even if applications for the lease have been invited.
- (2) If applications for a lease have been invited subject to conditions, the planning and land authority may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

169 Payment for leases

- (1) Subject to subsection (2), the planning and land authority must not grant a lease of territory land otherwise than for payment of an amount that is not less than the market value of the lease.

- (2) Subsection (1) does not apply in relation to—
- (a) a lease granted for a rent that is the full market rental value of the lease; or
 - (b) a lease granted under section 161(1)(d), section 163, section 164, section 171, section 171A or section 172.

Dictionary

(see s 2)

concessional lease—see section 159A.

APPENDIX D: Extracts from the Land (Planning and Environment) Regulation 1992 (ACT)

10A Concessional lease exemptions—Act, s 159A

The following leases are excluded from the definition of *concessional lease*:

- (a) a lease of territory land granted for residential purposes only;
- (b) a lease granted for rural purposes or purposes including rural purposes;
- (c) a lease granted to a territory-owned corporation;
- (d) a lease (the *individual lease*) granted for no consideration if—
 - (i) the individual lease is a subdivision of a lease (the *head lease*) held by the person to whom the individual lease is granted; and
 - (ii) the person has provided infrastructure on the land leased under the head lease;
- (e) a lease granted for commercial purposes if the lease was granted for less than market value only because—
 - (i) the lease was a lease for rent in excess of nominal rent that was granted after 1 January 1974; and
 - (ii) the rent was paid out—
 - (A) in accordance with a law that regulated the payment of land rent in the ACT and that was in force at the time of payment; or
 - (B) by agreement between the Commonwealth or Territory and the lessee.

Examples of residential purposes for par (a)

- 1 for the purpose of a single dwelling
- 2 for the purpose of not less than 3 dwellings and not more than 8 dwellings

Examples of rural purposes for par (b)

- 1 agriculture
- 2 horticulture
- 3 horse agistment
- 4 animal husbandry

Examples of commercial purposes for par (e)

- 1 industrial
- 2 business

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see

Legislation Act, s 126 and s 132).

22 Concessional lease increase—Act, s 184C (2)

- (1) The planning and land authority must increase the change of use charge for the variation of a concessional lease by an amount equal to 25% of the added value in relation to the variation.
- (2) This section applies in relation to the variation of a concessional lease only if—
 - (a) the lease is to be varied to provide for a use other than a community use; and
 - (b) the lease is not a lease held by the commissioner for housing to which section 19 (Commissioner for housing remission—Act, s 184C (1)) applies.
- (3) This section does not apply in relation to a variation of a lease if section 25 applies in relation to the variation.

23 Recently commenced lease increase—Act, s 184C (2)

- (1) The planning and land authority must increase the change of use charge for the variation of a recently commenced lease by an amount equal to 25% of the added value in relation to the variation.
- (2) For this section, the following leases are *recently commenced leases*:
 - (a) a lease (other than a further lease, a consolidated lease, a subdivided lease or a regranted lease) the term of which began 5 years or less before the date of the application for variation;
 - (b) a consolidated or subdivided recently commenced lease;
 - (c) a further recently commenced lease;
 - (d) a recently regranted lease.
- (3) Subsection (1) applies in relation to the variation of a lease consisting (under the Act, section 184) of the grant of a lease following the surrender of a previous lease if the surrendered lease was a recently commenced lease, unless the variation has the effect only of correcting an error in the surrendered lease.
- (4) This section does not apply to a variation of a lease to which either of the following sections applies:
 - (a) section 22 (Concessional lease increase—Act, s 184C (2));
 - (b) section 25 (Service station lease increase—Act, s 184C (2)).
- (5) In this section:

consolidated or subdivided recently commenced lease means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases if—

- (a) each surrendered lease was a recently commenced lease; or
- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a recently commenced lease—
 - (i) if the surrendered leases were not over parcels of land of equal area— the surrendered lease that was over the largest parcel of land was a

recently commenced lease; or

- (ii) if all surrendered leases were over parcels of land of equal area—any surrendered lease was a recently commenced lease.

further recently commenced lease means a further lease if the surrendered lease was a recently commenced lease.

recently regranted lease means a regranted lease if the surrendered lease was a recently commenced lease.

Enlarged area of land increase—Act, s 184C (2)

- (1) This section applies in relation to a variation of a lease consisting (under the Act, section 184) of the grant of a lease following the surrender of a previous lease if the area of land comprised in the new lease is larger than the area of land comprised in the surrendered lease.
- (2) If this section applies, for the Act, section 184C (2) the planning and land authority must increase the change of use charge for the variation by an amount equal to 25% of that part of the added value of the variation attributable to the additional part of land comprised in the new lease.
- (3) This section does not apply in relation to the variation of a lease if either of the following sections applies in relation to the variation:
 - (a) section 22 (Concessional lease increase—Act, s 184C (2));
 - (b) section 25 (Service station lease increase—Act, s 184C (2)).

26 Variation of lease to pay out rent—prescribed leases

For the Act, section 186(1)(a), each of the following classes of leases is prescribed:

- (a) leases granted for full market value payable as rent;
- (b) leases granted, for rural purposes or for purposes that include rural purposes, for a period of not less than 21 years;
- (c) concessional leases.

33 Concessional lease increase—Act, s 187C (2)

- (1) This section applies in relation to a consolidation or subdivision if any of the leases to be surrendered in the course of the consolidation or subdivision is a concessional lease.
- (2) For the Act, section 187C (2), the planning and land authority must increase the change of use charge for a consolidation or subdivision to which this section applies by an amount equal to 25% of that part of the added value in relation to the consolidation or subdivision that is attributable to the surrender of the concessional lease or leases in the course of the consolidation or subdivision.
- (3) This section applies in relation to a consolidation or subdivision only if a lease is to be granted in the course of the consolidation or subdivision for a use other than a community use.
- (4) This section does not apply in relation to a consolidation or subdivision if—
 - (a) section 34 (Recently commenced lease increase—Act, s 187C (2)) applies in

relation to the consolidation or subdivision; and

- (b) the amount of the increase in the change of use charge otherwise payable under this section is less than the amount of such an increase payable under section 34.
- (5) This section does not apply if—
 - (a) for a consolidation—section 35 (Consolidation involving service station lease increase—Act, s 187C (2)) applies; and
 - (b) for a subdivision—section 36 (Subdivision involving service station lease increase—Act, s 187C (2)) applies.

34 Recently commenced lease increase—Act, s 187C (2)

- (1) This section applies in relation to a consolidation or subdivision where any of the leases to be surrendered is a recently commenced lease.
- (2) For the Act, section 187C (2), the planning and land authority must increase the change of use charge for a consolidation or subdivision to which this section applies by an amount equal to 25% of that part of the added value in relation to the consolidation or subdivision that is attributable to the surrender of the recently granted lease or leases in the course of the consolidation or subdivision.
- (3) For this section, the following leases are *recently commenced leases*:
 - (a) a lease (other than a further lease, a consolidated lease, a subdivided lease, or a regranted lease) the term of which began 5 years or less before the date of the application for consolidation or subdivision;
 - (b) a further recently commenced lease;
 - (c) a consolidated or subdivided recently commenced lease;
 - (d) a recently regranted lease.
- (4) This section does not apply in relation to a consolidation or subdivision if—
 - (a) section 33 (Concessional lease increase—Act, s 187C (2)) applies in relation to the consolidation or subdivision; and
 - (b) the amount of the increase in the change of use charge otherwise payable under this section is less than or equal to the amount of such an increase payable under section 33.
- (5) This section does not apply if—
 - (a) for a consolidation—section 35 (Consolidation involving service station lease increase—Act, s 187C (2)) applies; and
 - (b) for a subdivision—section 36 (Subdivision involving service station lease increase—Act, s 187C (2)) applies.
- (6) In this section:

consolidated or subdivided recently commenced lease means a lease granted in the course of a consolidation or subdivision involving the surrender of 1 or more previous leases if—

 - (a) each surrendered lease was a recently commenced lease; or

- (b) if more than 1 lease was surrendered, and any (but not all) of the surrendered leases was a recently commenced lease—
- (i) if the surrendered leases were not over parcels of land of equal area—the surrendered lease that was over the largest parcel of land was a recently commenced lease; or
 - (ii) if all surrendered leases were over parcels of land of equal area—any surrendered lease was a recently commenced lease.

further recently commenced lease means a further lease if the surrendered or expired lease was a recently commenced lease.

recently regranted lease means a regranted lease if the surrendered lease was a recently commenced lease.

Dictionary

Note 3 Terms used in this regulation have the same meaning that they have in the *Land (Planning and Environment) Act 1991* (see Legislation Act, s 148.) For example, the following terms are defined in the *Land (Planning and Environment) Act 1991*, dict:

- ⊙ concessional lease (see s 159A) ...

Amendment history

Concessional lease exemptions—Act, s 159A

s 10A ins A2005-49 amdt 1.1

Concessional lease increase—Act, s 184C (2)

s 22 hdg sub A2002-30 amdt 3.520

s 22 (prev s 14A) ins SL1997-7 s 6
am SL1998-32 s 5; A2001-80 s 10
renum LRA (see SL2001-35 amdt 1.10)
am A2002-30 amdt 3.520; A2002-56 amdt 2.9; A2005-49 amdt 1.2

Concessional lease increase—Act, s 187C (2)

s 33 hdg sub A2002-30 amdt 3.535

s 33 (prev s 15E) ins SL1997-7 s 8
am SL1998-32 s 10; A2001-80 s 10
renum R6 LA (see SL2001-35 amdt 1.10)
am A2002-30 amdt 3.536, amdt 3.537; A2002-56 amdt 2.9; A2005-49 amds 1.4-1.6

APPENDIX E: Extracts from Planning and Development Bill 2006 (ACT)

Chapter 2 Object and important concepts

7 Meaning of *development*

In this Act:

development, in relation to land, means the following:

- (i) varying a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease;

Division 7.3.6 Deciding development applications

158 Deciding development applications

- (1) The planning and land authority or, for a development application that the Minister decides to consider under division 7.3.5 (Ministerial call-in power for development applications), the Minister, must—
 - (a) approve a development application; or
 - (b) approve a development application subject to a condition; or
 - (c) refuse a development application.

Note 1 For provisions about conditions, see s 160. Also, a development application to vary a lease granted as a concessional lease by surrender and regrant of the lease as a market value lease is subject to a condition (see s 254).

Note 4 The criteria for a decision on an application to vary a lease granted as a concessional lease are in div 9.4.2.

227 Meaning of *concessional lease* and *lease*—Act

- (1) In this Act:
 - concessional lease*—
 - (a) means a lease granted for a consideration less than the full market value of the lease, or for no consideration, if neither of the following payments has been made to the Territory:
 - (i) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;
 - (ii) an amount to reduce the rent payable under the lease to a nominal rent under section 266 (Variation of lease to pay out rent); and
 - (b) includes the following leases:
 - (i) a consolidated or subdivided concessional lease;

- (ii) a further concessional lease;
- (iii) a regranted concessional lease; but
- (c) does not include—
 - (i) a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in paragraph (b); or
 - (ii) a rural lease; or
 - (iii) a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the commissioner for housing under the *Housing Assistance Act 1987*; or
 - (iv) a lease prescribed by regulation.

lease means a lease (other than a sublease) of territory land—

- (a) granted under this Act; or
- (b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act and so come within this definition of *lease* (see s 446).

- (2) For subsection (1), definition of *concessional lease*, paragraph (a), it does not matter whether the consideration for the grant of the lease was paid as a lump sum or is payable under the lease as rent.
- (3) In this section:

consolidated or subdivided concessional lease means a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease.

further concessional lease means a further lease if the surrendered lease was a concessional lease.

regranted concessional lease means a regranted lease (whether the regrant is on the same or different conditions) if the surrendered lease was a concessional lease.

228 **Application—ch 9**

This chapter does not apply to a transfer by the Territory of a registered lease if the Territory is the registered proprietor of the lease.

231 **Granting leases**

- (1) The planning and land authority may grant a lease by—
 - (a) auction; or
 - (b) tender; or
 - (c) ballot; or
 - (d) direct grant.

Note 1 Not everyone may be eligible to be granted a lease under paragraph (a), (b) or (c) (see s 232).

Note 2 Section 233, s 234, s 235 and s 236 apply to grants under paragraph (d).

- (2) A lease granted under this section must include a statement about whether the lease is a concessional lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

244 Restrictions on dealings with certain leases

- (1) This section applies in relation to the following leases:
- (a) a lease that provides that the lessee cannot deal with the land, or part of the land, comprised in the lease without the prior written consent of the planning and land authority;
 - (b) a lease granted under section 231 (1) by auction, tender or ballot, if the class of people eligible or ineligible for the grant was restricted under section 232;
 - (c) a lease granted under section 231 (1) (d) (other than a lease granted to the Territory);
 - (d) a lease prescribed by regulation.

Note 1 This section has extended application (see s 440 and s 441).

Note 2 Dealings with concessional leases and rural leases, which are not restricted by this section, are restricted under s 257 and s 277.

- (2) The lessee, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease without the written consent of the planning and land authority under section 245.

Part 9.3 Grants of further leases

246 Grant of further leases

- (1) This section applies if—
- (a) a person (the *lessee*) who is or was the holder of a lease (the *old lease*) of land applies to the planning and land authority for the grant of a further lease of the land; and
 - (b) neither the Territory nor the Commonwealth needs the land for a public purpose; and
 - (c) either—
 - (i) before expiry of the old lease, the lessee surrenders the old lease; or
 - (ii) the old lease expired not more than 6 months before the application for the grant of a further lease; and
 - (d) if the old lease is not a residential lease—all rent due under the old lease is paid; and
 - (e) if the lease is a rural lease—the amount determined under section 273 for the grant is paid; and
 - (f) the criteria (if any) prescribed by regulation are satisfied.

- (2) The planning and land authority must grant the lessee a further lease of the land for a term not longer than—
 - (a) 99 years; or
 - (b) for a rural lease for which a period shorter than 99 years is determined under section 274—the shorter period.
- (3) A further lease granted under this section must include a statement about whether the lease is a concessional lease.

Note A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

Part 9.4 Concessional leases

Division 9.4.1 Deciding whether leases concessional

248 Application for decision about whether lease concessional

A lessee may apply to the planning and land authority for a decision about whether the lease is a concessional lease.

249 Decision about whether lease concessional

- (1) On application under section 248, the planning and land authority must decide whether the lease is concessional or not.
- (2) However, the planning and land authority must not make a decision under subsection (1) unless the authority has—
 - (a) given written notice (the *application notice*) of the application to each person (other than the lessee) with a registered interest in the lease; and
 - (b) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
 - (c) considered any representations made in the time given in the application notice.
- (3) If the planning and land authority has not made a decision on the application at the end of the period of 15 working days after the day the period for making representations given in the application notice ends, the authority is taken to have decided (the *deemed decision*) that the lease is a concessional lease.

Note A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

- (4) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (2), the authority may decide that the lease is not concessional under this section despite the deemed decision.

Note A decision of the AAT on review is taken to have been a decision of the original decision-maker, so the planning and land authority will not be

able to decide that the lease is not concessional if the AAT has decided an application for review of the deemed decision (see *Administrative Appeals Tribunal Act 1989*, s 44 (11)).

- (5) The planning and land authority must give written notice of the decision under subsection to the applicant and anyone else with an interest in the lease to which the decision relates.

Note If the notice is given to a person who may apply to the AAT for review of the decision to which it relates, the notice must comply with the requirements of the code of practice in force under the Administrative Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).

250 **Authority may decide whether lease concessional on own initiative**

- (1) The planning and land authority may, on its own initiative, decide whether a lease is concessional.
- (2) However, the planning and land authority must not make a decision under subsection (1) unless the authority has—
- (a) given written notice (the *lease decision notice*) of the authority's intention to make a decision under subsection (1) to each person with a registered interest in the lease; and
 - (b) in the lease decision notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
 - (c) considered any representations made in the time given in the lease decision notice.
- (3) Also, if the planning and land authority gives a lease decision notice in relation to a lease, the authority must make a decision under subsection (1) in relation to the lease not later than 15 working days after the day the period for making representations given in the lease decision notice ends.
- (4) The planning and land authority must give written notice of the decision under subsection (1) to each person with an interest in the lease to which the decision relates.

Note 1 If the notice is given to a person who may apply to the AAT for review of the decision to which it relates, the notice must comply with the requirements of the code of practice in force under the Administrative Appeals Tribunal Act 1989, s 25B (1) (see s 401 (3)).

Note 2 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

251 **Decision that lease is concessional**

- (1) This section applies if—
- (a) the planning and land authority decides that a lease is concessional; and
 - (b) either—

- (i) no application is made to the AAT for review of the decision that the lease is concessional within the time allowed for applications; or
- (ii) an application for review of the decision is made and the tribunal decides to confirm the decision.

Note The planning and land authority may decide that a lease is concessional under s 249 or s 250.

- (2) The planning and land authority must lodge notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.

Division 9.4.2 Varying concessional leases to remove concessional status

252 Application—div 9.4.2

This division applies to an application for development approval to vary a lease granted as a concessional lease to remove its concessional status.

Example of varying lease to remove concessional status

surrender of the concessional lease and regrant of a lease for market value

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

253 Criteria for application to vary concessional lease

In deciding whether to approve an application for development approval to which this division applies, the planning and land authority or Minister must consider the following:

- (a) whether the Territory wishes to continue to monitor the lease holder and use of the lease by requiring consent before the lease is dealt with;
- (b) whether approving the application would cause any disadvantage to the community;
- (c) whether the application to vary the lease to make it a market value lease is, or is likely to be, part of a larger development and, if it is, or is likely to be, part of a larger development what the larger development will involve;
- (d) whether the Territory should buy back, or otherwise acquire, the lease.

254 Development approval of application about concessional lease subject to condition

If the planning and land authority or Minister approves a development application to vary a lease granted as a concessional lease, the approval is subject to the condition that the lessee pays the Territory the payout amount worked out under section 255.

Note 1 The ways a lease may be varied to change its concessional status include by surrender and regrant (see s 252, example).

Note 2 For approval of development applications—see s 158.

255 Working out amount payable to discharge concessional leases

- (1) This section applies if a development application in relation to a lease is subject to the condition that the lessee pays the Territory the payout amount worked out under this section.
- (2) The payout amount for the lease is the amount worked out as follows:

$$MV - \left(\frac{AP}{OV} \times MV \right)$$

Note A person may also be required to pay a change of use charge, less any remittance, plus any increase, under div 9.6.3.

- (3) In this section:
AP, for a lease, means the amount (if any) paid for the lease at grant.
MV, for a lease, means the market value of the lease if it were a market value lease.
OV, for a lease, means the market value of the lease at grant if it had been a market value lease.
- (4) To remove any doubt, an amount paid as rent under a lease is not an amount paid for the lease.

256 Uses under leases varied by surrender and regrant to remove concessional status

- (1) This section applies to a lease varied only to remove the concessional status of the lease by surrender and regrant of the lease.
- (2) The regranted lease authorises each use of the land, and any building or structure on the land, authorised under the lease before the lease was varied to remove its concessional status.
- (3) To remove any doubt—
 - (a) this section does not apply if the lease is varied other than to remove the concessional status of the lease; and
 - (b) subsection (2) applies despite anything to the contrary in the territory plan.

Division 9.4.3 Restrictions on dealings with concessional leases

257 Restrictions on dealings with concessional leases

- (1) The lessee, or anyone else with an interest in a concessional lease, must not, during the term of the lease, deal with the lease without the written consent of the planning and land authority.
- (2) A dealing in relation to a lease to which this section applies that is made or entered into without consent has no effect.

258 Consent to s 257 dealings

- (1) The planning and land authority must not consent to a dealing under section 257 in relation to a lease unless—
 - (a) satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease

should be granted or the person to whom it is proposed that possession of the land should be given, is a person (an *eligible person*) who could be granted the concessional lease; or

- (b) for a dealing that is a subletting—satisfied that the lessee, or an eligible person, continues to be the main user of the lease.

Examples of lessee continuing to be main user

- 1 A community hospital (the *lessee*) with a concessional lease proposes to sublet an area within the hospital for a coffee shop. The lessee continues to operate the hospital, which is the majority of the site and offers most of the services being provided from the site. The sublease is likely to be allowed because it is a complementary proposed use of the sublet area.
- 2 A community group has subleased part of a lease to a commercial enterprise and the remainder of the lease to an eligible person. The sublease to the commercial enterprise is likely to be allowed as long as the eligible person is the main user of the lease.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In deciding whether the lessee proposing to sublet the lease, or an eligible person, continues to be the main user of the lease, the planning and land authority must consider the following:
 - (a) the proposed area of the sublease;
 - (b) the extent to which the lessee continues to provide most of the goods, services or both to be provided from the area leased;
 - (c) the extent to which the use of the area proposed to be subleased will be ancillary to the permitted uses of the area that is not proposed to be subleased;
 - (d) the extent to which the use of the area proposed to be subleased will be complementary to the use of the area that is not proposed to be subleased.
- (3) The validity of a dealing made or entered into with the consent of the planning and land authority is not affected—
 - (a) by a defect or irregularity in relation to the giving of the consent; or
 - (b) because a ground, or all grounds, for the consent had not arisen.

Part 15.5 Transitional—leases and licences

439 Transitional—community leases

- (1) To remove any doubt, after commencement day, a person may deal with a lease granted under the repealed Act, section 163 (Leases to community organisations) with the consent of the planning and land authority under this Act, section 257 (Restrictions on dealings with concessional leases).
- (2) In this section:

deal with a lease—see section 226.

Schedule 1 Reviewable decisions, eligible entities and interested people

19	decision under s 249 or s (4) that a lease is, or is not, a concessional lease	planning and land authority	lessee
20	decision under s 255 about the payout amount for a concessional lease	planning and land authority	lessee

Part 4.3 Development proposals requiring EIS—areas and processes

11	proposal to vary a lease to change its concessional status
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Dictionary

(see s 3)

concessional lease—see section 227.

market value lease means a lease other than a concessional lease.