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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO THE
STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND
TERRITORY AND MUNICIPAL SERVICES - REPORT NO 15

DRAFT VARIATION DV306
Residential development, estate development and leasing codes

Circulated by the authority of
Minister for Environment and Sustainable Development
Mr Simon Corbell MLA

Tabled 26 Feb 2013

Recommendation 1

The Committee recommends that Draft Variation to the Territory Plan No 306 proceed subject to the recommendations set out in this report

Response

Agreed.

The agreed recommendations have been incorporated into the final variation to the Territory Plan No 306 and approved by the Minister for the Environment and Sustainable Development for tabling in the Legislative Assembly.

Recommendation 2

The Committee recommends that the Planning Committee of the 8th Legislative Assembly of the ACT consider revisiting some or all of the issues raised during the inquiry into DV306.

Response

Noted.

The Government would welcome a further review by the Planning Committee of the 8th Legislative Assembly of the issues raised during the inquiry into DV306. Because DV306 will be progressed in the interim, any further changes to the Territory Plan recommended by the next committee and supported by the Government would be the subject of a separate variation.

The issue of the timeframe stipulated by the *Planning and Development Act 2007* for the Committee to consider a draft variation is noted, particularly where an election falls within the time allowed. More flexibility in this regard would require an amendment to the *Planning and Development Act 2007*.

It should be noted that to avoid the situation of the Committee considering a draft variation over the election period, no draft variations were referred to the Committee after March 2012.

Recommendation 3

The Committee recommends that the Environment and Sustainable Development Directorate monitors the impact on solar access of structures that don't require approval, and amend requirements if necessary

Response

Agreed.

The Government acknowledges that in some circumstances the erection of exempt structures such as boundary fences, sheds, garages, gazebos and the like could have a minor impact on the solar access provisions proposed by DV306. It should be noted however that restrictions apply to the height of many exempt structures. Under the Planning and Development Regulation 2008 roofed structures such as sheds and garages are exempt from obtaining approval if they are under a certain size and fit entirely within a plane projecting 30° above the horizontal from a height 3m above natural ground level at the boundary. This is not dissimilar in approach to the solar access

provisions found in DV306 (a plane at the relevant sun angle from 1.8m above ground level).

The Environment and Sustainable Development Directorate (ESDD) will monitor the effect of exempt structures on the sun angle envelope provisions. If deemed appropriate, amendments may be proposed to either the exemption provisions under the regulation or the solar access provisions found in the Territory Plan by way of a future variation to the Territory Plan.

Recommendation 4

The Committee recommends that the Environment and Sustainable Development Directorate considers changes which would make development to one edge of the block more feasible so as to eliminate wasted strips of land at both edges of blocks

Response

Agreed.

For many years building setbacks have been applied to residential development. Side boundary setbacks in particular seek to perpetuate the typical “rhythm” of residential development found in the city, to provide visual and acoustic privacy, air circulation , and access between the front and rear yards. They are therefore not necessarily “wasted strips of land”.

The Territory Plan currently allows walls without windows to be located on the side boundary without restriction on compact blocks and in some circumstances on mid sized blocks to maximise the amount of usable space on the block. These provisions are retained in DV306. DV 306 makes provision for garage walls to be located on or near side and rear boundaries

on large blocks but, as with all similar provisions, is subject to the sun angle envelope.

In response to the Committee's recommendation the solar envelope has been adjusted so that the "solar fence" is at height of 2.4m on the boundary for a section of the block's boundary located between the minimum front setback and a point 10 metres rearward. A 1.8 metre high "solar fence" will apply to the rest of this boundary. This change allows a dwelling to be located closer to the side boundary in the forward portion of the block, although lower and upper floor setback provisions would still apply. The neighbours would also be aware that for this portion of the block the potential overshadowing of their block could be somewhat greater.

Following the commencement of DV306 (as recommended by the standing committee) the impact of the provisions on the design and location of residences will be monitored. If required, amendments may be made to the relevant provisions by way of a future variation to the Territory Plan.

Recommendation 5

The Committee recommends that the Environment and Sustainable Development Directorate reconsiders RZ2 changes to make them more consistent with the goals of affordable housing and urban infill

Response

Agreed in principle.

The proposed changes to the RZ2 provisions were introduced in response to community concern about the scale and character of redevelopment in RZ2

areas. The provisions, which are currently in effect, limit the number of dwellings on a given site. Affordability is affected not only by limiting dwelling numbers but by a tendency towards large dwellings to maximise the allowable plot ratio.

The challenge is to strike the appropriate balance between the protection of neighbourhood character and housing affordability. In response to the committee's recommendation ESDD will commence a strategic review of RZ2 zoning to ensure it is appropriate to its particular location. ESDD will also continue its monitoring of redevelopment proposals in RZ2.

It should be noted that other initiatives will potentially increase dwelling yield and at least partially offset possible losses through the new RZ2 provisions. The proposed reduction of the minimum block size for dual occupancies in RZ2 will increase the number of properties available for this form of development. In addition, the proposed provisions for secondary residences on blocks larger than 500m² are expected to result in significant numbers of additional smaller dwellings in established areas, including RZ2.

Other measures to increase housing affordability could also be explored in the future including allowing apartments in certain areas zoned RZ2 (eg. where adjacent to commercial zones) and rezoning other RZ2 areas to a higher density zone such as RZ3. Any changes proposed would be the subject of a future variation to the Territory Plan and be evaluated against the objects of protecting the character of the surrounding area and ensuring development is of high quality. The broader strategic approach to RZ2 zonings would be considered in the context of the Planning Strategy.

Recommendation 6

The Committee recommends that the Environment and Sustainable Development Directorate provides for all future variations (a) a Consultation Report which identifies each of the concerns raised and responds to each individually so that it is clear to submitters and the Committee what changes have been made in response to particular concerns and if changes have not be made, the reasons why, and (b) a comparative table which details the relevant current provisions of the Territory Plan, the proposed changes and the basis for making the change

Response

Agreed.

The consultation report for future Territory Plan variations will, wherever practicable, identify each of the relevant issues raised in the submissions and will respond to each individually. The responses will make it clear whether a change will be made in response to the concern and if not, why a change is considered to be inappropriate.

Future Territory Plan variations will, wherever practicable, also include a comparison between the relevant current provisions of the Territory Plan and the proposed changes and include reasons for why the changes are being proposed. This information would be made available to the public with the draft variation document during the consultation period.

It should be acknowledged that, depending on the complexity of the proposed variation, compliance with this recommendation is likely to increase the length of the documents involved.

Recommendation 7

The Committee recommends that the Environment and Sustainable Development Directorate includes with its future draft variation consultation reports, an index listing the submission number and organisation/individual who made the submission

Response

Agreed.

Consultation reports for future draft variations will include an index that lists the submission number and the organisation/individual who made the submission. It should be noted that currently for Territory Plan variations the submissions received as part of the consultation process are indexed and made available on the ESDD website shortly after the consultation period has closed. This enables the public to see who has made a submission on the draft variation and read the comments received, in accordance with the *Planning and Development Act 2007*.

Recommendation 8

The Committee recommends that the Territory Plan be published electronically in a number of formats, with hyperlinks for ease of understanding

Response

Agreed in principle.

As a notifiable instrument the Territory Plan is accessible on the ACT Legislation Register. One of the functions of the register is to make authorised versions of ACT legislation and instruments freely available.

Significant issues of consistency and accuracy arise when ‘official’ copies of the Territory Plan are located in more than one place. Consequently the only authorised, complete and up-to-date Territory Plan document is the one located on the Legislation Register.

As the Legislation Register is a document based system, there is limited capacity to manipulate the format of the Territory Plan. Should the capabilities of the register be upgraded in the future, the potential to ‘customise’ the Territory Plan document for a particular development application could be explored.

In the meantime, a review of the Territory Plan will be undertaken to ensure all current hyperlinks are correct. This review will also investigate where new hyperlinks can be inserted into the various codes in the Territory Plan to make the document easier to use.

In response to concerns regarding the usability of the Territory Plan, ESDD will update the current user guides to the plan and the development assessment process. This will assist both applicants and the community in understanding the planning process in the ACT, the role of the Territory Plan and the context surrounding the current draft variation.

Factsheets that explain a proposed draft variation in ‘plain English’ will continue to be prepared for draft variations where appropriate.

Recommendation 9

The Committee recommends that proposed mandatory Rules 22 and 23 of the Residential Zones Development Code include associated criteria to remove the requirement for a secondary residence car parking space, while ensuring that the dwelling design allows for any future car parking needs to be met

Response

Agreed.

The following criteria have been added to the Residential Zones Development Code in association with Rules 22 and 23:

C22 – Car parking on the block is adequate for current and future residents and visitors

C23 – Car parking and related access on the block achieve all of the following:

- a) Reasonable amenity of neighbouring *residential* blocks
- b) Consistency with the value of the *streetscape*
- c) Public safety especially in relation to pedestrians and cyclists
- d) Reasonable surveillance of parking spaces

The committee also made the following suggestions in its report:

1. Add the terms ‘relocatable unit’ and ‘habitable suite’ to the list of redundant definitions in Appendix G of DV306

Response

Agreed. These terms have been added to the list of redundant definitions.

2. Reorder the rules relating to secondary residences based on whether or not they have rules and/or criteria

Response

Not agreed. The current order of provisions relating to secondary residences is considered to be appropriate.

3. Rephrase C12 to make clearer the reference to access by resident(s) of the secondary dwelling to facilities within the primary residence

Response

Agreed. C12 has been reworded to:

A secondary residence is of a size sufficient to meet the needs of a typical resident

Residents of the secondary residence sharing facilities such as storage or a laundry with the residents of the primary residence may be considered when determining compliance with this criterion.

4. Amend definition of 'dwelling' or 'multi unit housing' to clarify that a secondary residence is not multi unit housing

Response

Agreed in principle.

The statement of application of the Multi Unit Housing Development Code indicates that it does not apply to secondary residences.

Recommendation 10

The Committee recommends that the Government provides advice on the likely application of the Lease Variation Charge to secondary residences as a matter of urgency

Response

Agreed.

In accordance with the recommendations of the ACT Strategic Plan for Positive Ageing and the ACT Affordable Housing Action Plan, and with the endorsement of Government, secondary residences were introduced through DV306 as a new form of residential development. Secondary residences replace habitable suites and relocatable units and seek to satisfy an increasing demand for affordable housing for people of all ages and states of health.

Unlike habitable suites and relocatable units, a secondary residence may require a change to the lease if the lease was granted for single dwelling housing. It should be noted that if the lease was granted for 'residential purposes' a lease variation is not required for a secondary residence.

S278E of the *Planning and Development Act 2007* provides the appropriate mechanism for the Minister for Planning and the Treasurer to remit lease variation charge (LVC) for secondary residences. To encourage the development of this new form of housing, as well as ensuring equity, such a proposal can be considered by the Government once DV306 comes into effect.

Recommendation 11

The Committee recommends that community consultation on precinct codes should commence as soon as possible

Response

Agreed.

ESDD has created a precinct code for every suburb and (non-urban) district in Canberra. These codes were introduced through a technical amendment in December 2012. There was no change to policies. The next stage of this process will be to incorporate statements of desired character into suburb precinct codes, where appropriate. The community will be consulted as part of the amendment process.

As resources become available, statements of ‘desired character’ for those suburbs that are not currently covered by an existing neighbourhood plan will be formulated. Priority will be given to those suburbs that are likely to be subject to significant change with potential to affect the character of the existing area (e.g. around centres and transport corridors). This would be consistent with ESDDs program for developing master plans (which then lead to precinct codes) and will involve consultation with the community.

Recommendation 12

The Committee recommends that as part of developing precinct codes, the objectives of the various zones should be clarified and standardised

Response

Agreed in principle.

As part of developing precinct codes relevant statements of desired character will be included. These may explain the reasoning behind the distribution of the various residential zones in a particular suburb.

The wording of residential zone objectives proposed by DV306 is considered to be sufficient to differentiate between the five residential zones, notwithstanding that some of those objectives are common. The factsheet prepared for DV306 explaining residential zones in the ACT will be updated and made available on the ESDD website as general information. This will further clarify the intent of the various residential zones and the type of development they permit.

Recommendation 13

The Committee recommends that the definition of 'desired character' should be future looking to equip the suburb for anticipated changes

Response

Agreed in principle.

The proposed definition of 'desired character' implies a future state. It does not need to be expressed as "desired future character". The future state may be different from the present (eg. medium density redevelopment in the Inner

North) or it may largely perpetuate the current (eg. single dwelling neighbourhoods in RZ1). The nature of that “desired character” is expressed in the relevant zone objectives and, in some cases, through a more specific statement of “desired character” in a suburb precinct code.

Recommendation 14

The Committee recommends that the Environment and Sustainable Development Directorate articulates the reason for unit titling restrictions on dual occupancies in RZ1

Response

Agreed.

The following information is available on the ESDD website in regards to unit titling and dual occupancies:

In September 2009, changes to the *Unit Titles Act 2001* came into effect which restricted unit titling of some two-unit developments. The amendments mean that two unit developments are only permitted to be unit titled where one unit is wholly or partly superimposed on the other unit. Three or more unit developments are not affected.

Why was the legislation changed to restrict unit titling of two-unit developments?

The legislation was changed because unit owners and occupiers and the Law Society raised concerns about shortcomings in existing legislation.

Most complaints about dual occupancies were found to be about non-observance of legislative requirements relating to separate dwellings built beside one another or behind one another.

Developers and owners appeared to view these developments as a subdivision rather than a unit title and were not complying with the

Act regarding unit titling. This presented significant difficulties when one or both units were to be sold. It was at this point when full compliance with the Act was required.

In some circumstances, accounts, minutes and other documents needed to be assembled for many years past; and in many cases these were not available. This could have the effect of significantly delaying settlement of units in a dual occupancy development of this type.

Can I still build two dwellings that sit side by side or one behind the other?

Yes, but you can't unit title these dwellings. You can subdivide the block (where the zoning and block size allows) into two separate Crown leases and separate services with appropriate easements for access should be provided.

However, if you are contemplating subdivision you should first consult with utility providers eg. ACTEW as separate services cannot be provided in all circumstances.

The government will review the current unit titling restrictions on dual occupancies. The issues that led to the current restrictions will be considered as part of this review, with a view to exploring alternatives to achieve the same ends as well as considering the implications of any amendment. This could consider amending the Unit Titles Act to once again permit the unit titling of dual occupancy development (however this would not permit unit titling in RZ1 zones). Such a change would be consistent with the goals of increasing urban infill and facilitating more affordable housing.

Recommendation 15

The Committee recommends that the Environment and Sustainable Development Directorate issues an explanation of how DV 306 supports 50/50 infill and greenfield development, housing affordability and the ACT's greenhouse gas reduction target

Response

Agreed.

The Government considers that DV306 supports 50/50 infill and Greenfield development as well as housing affordability and the ACT's greenhouse gas reduction target.

The first strategy of the ACT Planning Strategy, adopted in June 2012, is:

‘create a more compact, efficient city by focusing urban intensification in town centres, around group centres and along the major public transport routes, and balancing where greenfield expansion occurs’.

One of the outcomes for 2030 included in the Strategy is:

In 2030 Canberra will be a city that makes it easy for people to make more sustainable living choices and has the resourcefulness and capacity to manage change.

Two indicators for meeting this outcome are:

- The proportion of new housing delivered through urban intensification is 50% or more
- There is greater diversity in the types of dwellings within each district in Canberra with an increasing percentage of attached housing

DV306 continues to support the policy of urban infill. Although the proposed RZ2 provisions will effectively limit the number of multi unit dwellings permitted on a site, other changes proposed in DV306 will enable more dwellings to be built in established areas. These include reducing the minimum block size for a dual occupancy in RZ2 from 800m² to 700m² and the new secondary residence provisions.

Reducing the minimum block size to 700m² in RZ2 will increase the number of blocks available for dual occupancy development. The secondary residence provisions will significantly increase the potential for additional dwellings in residential areas. Unlike the habitable suite requirements they replace, there are no restrictions on who can inhabit a secondary residence (such as someone requiring or providing care).

These two changes will help achieve greater diversity of housing types as well as encouraging more dwellings to be constructed in existing areas, thus improving housing affordability.

The solar access provisions included in the residential development codes aim to protect the solar access of neighbours. The codes also require a certain amount of sunlight to living areas on the winter solstice. These provisions, as well as the requirements of the Building Code of Australia, improve the energy efficiency of residences and thereby assist in reducing greenhouse gas emissions.

The Estate Development Code requires new blocks to comply with the block compliance tables or meet the criterion that the orientation of the blocks facilitates a dwelling on the block to achieve passive solar energy efficiency. By ensuring that the size, slope and orientation of new blocks allows a solar passive residence to be constructed on it assists in achieving greenhouse gas

reduction targets. Provisions in the Estate Development Code that improve the infrastructure to promote alternate modes of transport assist in reducing the dependence on cars, thereby reducing greenhouse gas emissions.

It should be noted that DV306 is but one of a number of Government initiatives with implications for housing affordability and achieving the ACT's greenhouse gas reduction targets. DV306 improves the framework for assessing higher density residential development and new estates and updates and enhances the provisions related to solar access. Other major policy changes, such as rezonings, will also have an impact.

As noted in the response to recommendation 5, redevelopment in RZ2 has not been making a major contribution to urban infill in the ACT. The significant increases in dwelling numbers in existing areas occur in the RZ3, RZ4 and RZ5 zones, as well as commercial zones. The ACT Planning Strategy intends to focus urban intensification to town centres, around group centres and along major public transport routes. This may involve the rezoning of land and/or the release of existing sites for urban redevelopment.

Once these more structural changes are in place, the provisions introduced through DV306 will facilitate future development in strategic locations consistent with increased infill development, improved housing affordability and reduced greenhouse gas emissions.

Recommendation 16

The Committee recommends that the Environment and Sustainable Development Directorate introduces a sliding scale for plot ratios for large blocks (greater than 500m²)

Response

Agreed in principle.

ESDD will investigate the possibility of introducing a sliding scale for plot ratio, particularly for large single dwelling blocks. Plot ratio is only one of the controls contained in the Territory Plan that aim to manage the impact of the dwelling on its surroundings. Others include setbacks, building envelopes, height limits etc. Controls on plot ratio effectively limit the size of a dwelling that can be built on any particular block of land. Setting the limit too low will potentially frustrate many landowners' ability to build the house they want or to extend their existing houses. Setting it too high will potentially lead to houses that appear overly bulky in their urban context.

It is acknowledged that a flat 50 per cent plot ratio limit can enable large dwellings that do appear overly bulky in some circumstances and that a sliding scale could address this issue to some extent. The challenge will be to find a formula that appropriately balances the competing objectives given the range of block sizes and different urban contexts that exist in Canberra.

Any recommended changes will need to be incorporated into a future Territory Plan variation that would be subject to public consultation.

Recommendation 17

The Committee recommends that the Environment and Sustainable Development Directorate considers increasing the minimum block size where integrated development is not required

Response

Agreed in principle.

Once DV306 comes into effect the provisions found in the Estate Development Code relating to minimum block sizes will be monitored, particularly with respect to the impact on the streetscape. If deemed necessary, changes may be made to the minimum block size provisions by way of a future variation to the Territory Plan.

Recommendation 18

The Committee recommends that the Environment and Sustainable Development Directorate reviews the interaction of plot ratio and plot size to eliminate anomalies

Response

Agreed

As part of the investigation into plot ratio controls for large blocks, the relationship between plot ratio and block size will be reviewed. This will seek to eliminate any anomalies, particularly regarding the transition from compact to mid sized to large blocks. Any recommended changes arising from this review will be incorporated into a Territory Plan variation and be subject to public consultation.

Recommendation 19

The Committee recommends that the previous flexibility applying to the design of facilities and spaces covered by community title schemes be retained

Response

Agreed in principle.

Previously a development undertaken under a community title scheme was not required to comply with the standards applying to similar public infrastructure and public open space. Rather the proposal was treated like a multi unit development despite the fact it could contain infrastructure such as roads, kerbs, drainage, sewerage and lighting similar to those found in a traditional subdivision.

Many of these standards are important for community safety and amenity. For instance internal roads may need to be capable of safely accommodating a fire truck or garbage truck. Compliance with standards related to the construction of infrastructure and facilities is a significant issue as the residents of the community title scheme are responsible for any repairs and maintenance rather than the Government. Several community councils also raised the issue of the provision of neighbourhood parks in community title developments. When higher density housing is proposed it is important that adequate communal open space is provided.

By requiring a community title scheme to comply with the entity endorsement provisions in the Estate Development Code, the quality of infrastructure will be comparable to that provided in a traditional estate. As with traditional estates, the relevant entity (most often TAMS) can be flexible in the application of standards in some circumstances, particularly where the

assets will be owned and maintained by an owners corporation rather than Government.

It should also be noted that a provision is included in the Multi Unit Housing Development Code (MUHDC) that requires developments of 40 dwellings or more (other than apartments) to have common areas that comply with provisions relating to pedestrian paths, verge landscaping, public realm standards for on-street parking and water sensitive urban design under the Estate Development Code.

Recommendation 20

The Committee recommends that a minimum quantity of biologically active, permeable or green space be required on all blocks

Response

Agreed.

Both the MUHDC and the Single Dwelling Housing Development Code (SDHDC) contain provisions requiring a portion of the block to be retained as planting area. Under the Territory Plan planting area means:

an area of land within a block that is not covered by buildings, vehicle parking and manoeuvring areas or any other form of impermeable surface and that is available for landscape planting.

A criterion is also included in the MUHDC that requires the landscape and site design to contribute to energy efficiency by providing summer shade and allowing winter sun to living areas. The criterion also requires the planting of semi-mature trees and the planting of trees with a minimum mature height of 4m.

As these provisions are adequate no further changes to the codes are deemed necessary.

Recommendation 21

The Committee recommends that the ACT Government reviews nature strip requirements to ensure adequate provision of street trees

Response

Agreed.

Territory and Municipal Services (TAMS) is currently reviewing its standards, including provisions applying to street verge design and street trees. Should these standards be modified the Estate Development Code will be amended accordingly through a future variation to the Territory Plan.