

STANDING COMMITTEE ON PLANNING, PUBLIC
WORKS AND TERRITORY AND MUNICIPAL SERVICES

Draft Variation to the Territory Plan No. 288

Changes to Residential Zones Multi-Unit Housing Development
Code Part A(5) and Residential Zone Changes for Blocks
3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons

JULY 2009

Committee Membership

Ms Mary Porter AM MLA	Chair
Ms Caroline Le Couteur MLA	Deputy Chair
Mr Alistair Coe MLA	Member

Secretariat

Ms Nicola Derigo	Secretary
Ms Lydia Chung	Administrative Assistant

Contact Information

Telephone	02 6205 0435
Facsimile	02 6205 0432
Post	GPO Box 1020, CANBERRA ACT 2601
Email	committees@parliament.act.gov.au
Website	www.parliament.act.gov.au

Resolution of Appointment

On 9 December 2008, the ACT Legislative Assembly agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

6 (1) (e) a Standing Committee on Planning, Public Works and Territory and Municipal Services to examine matters related to planning, land management, proposed capital works projects in the public sector, including works undertaken by territory owned corporations, municipal transport services, heritage and sport and recreation.

The Assembly agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.

The Assembly also agreed:

6 (3) If the Assembly is not sitting when the Standing Committee on Planning has completed consideration of a report on draft plan variations referred pursuant to section 73 of the *Planning and Development Act 2007* or draft plans of management referred pursuant to section 326 of the *Planning and Development Act 2007* 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 73 (2) of the *Planning and Development Act 2007* states:

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate Committee of the Legislative Assembly together with a request that the Committee report on the draft plan variation to the Legislative Assembly.

¹ Legislative Assembly for the ACT, Minutes of Proceedings No. 2, 9 December 2008, pp14–18, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

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RECOMMENDATIONS

RECOMMENDATION 1

2.36 The Committee recommends that the ACT Planning and Land Authority commission all Planning Studies itself and, where a Territory Plan Variation is initiated by request from a proponent, require the proponent to fund the cost of the study.

RECOMMENDATION 2

3.15 The Committee recommends that Criteria C25 (d) of the Multi-Unit Housing Development Code be amended to protect the solar access requirements of developments on the same land, in addition to protecting adjacent land.

RECOMMENDATION 3

3.16 The Committee recommends that the proposed changes to Rule R25 and Criteria C25 of the Residential Zones Multi-Unit Housing Development Code Part A (5) proceed.

RECOMMENDATION 4

4.21 The Committee recommends that the proposed variation to the Territory Plan to re-zone Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons to R25 high density residential zoning proceed.

RECOMMENDATION 5

4.45 The Committee recommends that ACTPLA increase the density allowances in the lease and development conditions for Blocks 3 and 4 Section 69 Lyons to enable real densification on the site.

RECOMMENDATION 6

4.46 The Committee recommends that the proposed variation to the Territory Plan to include Rule R27A, allowing development up to 10 storeys on part of Block 4 Section 69 Lyons, should proceed subject to Recommendation 5 being agreed.

RECOMMENDATION 7

5.14 The Committee recommends that ACTPLA, in its review of the Residential Zones Multi-Unit Housing Development Code as part of the 'ACTPLAN' initiative, take into account the need to improve the energy efficiency of multi-unit buildings, including the possibility of increasing the minimum solar access requirements.

RECOMMENDATION 8

6.2 The Committee recommends that ACTPLA not combine multiple planning and zoning issues into a single Draft Variation in future unless all issues are specific to a single Zone type, Block, Section or group of Blocks. Territory-wide Variations to zoning requirements should be promoted as such.

RECOMMENDATION 9

6.4 The Committee recommends that future Draft Variation documentation include additional information on the current Territory Plan provisions, to assist the community to better understand the implications of the variation.

RECOMMENDATION 10

6.6 The Committee recommends that in future ACTPLA ensure all relevant documentation is available to the public during the statutory Draft Variation consultation period and that ACTPLA check that website links to those documents work.

1 INTRODUCTION

- 1.1 Both Federal and ACT law and policy govern 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 make laws to establish a statutory planning authority – now the ACT Planning and Land Authority – and for that authority to prepare and administer a Territory Plan.³
- 1.2 The object of the Territory plan is to ensure, in a manner not inconsistent with the National Capital Plan, the planning and development of the ACT provide the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.⁴ The ACT *Planning and Development Act 2007* (the Act) requires the Territory Plan to set out the planning principles and policies for achieving its object in a way that gives effect to sustainability principles, including policies that contribute to achieving a healthy environment in the ACT.⁵
- 1.3 The Territory Plan includes a statement of strategic directions, a map, objectives and development tables applying to each zone as well as a series of general, development and precinct codes. It also includes structure plans and concept plans for the development of future urban areas.
- 1.4 The Territory Plan Map graphically represents the applicable land use zones (under the categories of Residential, Commercial, Industrial, Community Facility, Urban Parks and Recreation, Transport and Services and Non Urban), precincts and overlays.

² Accessible via: <<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/FF4122C876FCA3D5CA2572D700834EF2>>

³ *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), Section 25.

⁴ *Planning and Development Act 2007*, Section 48.

⁵ *Planning and Development Act 2007*, Section 49.

- 1.5 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, prepared by the ACT Planning and Land Authority for stakeholder comment. There can be a number of versions of a Draft Variation depending on the consultation program.
- 1.6 Under the Act the Minister has the discretion to refer a Draft Variation, within 20 working days of receiving it, to an appropriate committee of the Legislative Assembly for consideration and reporting. Currently the Standing Committee on Planning, Public Works and Territory and Municipal Services is the appropriate Committee.⁶
- 1.7 The Minister must not take action in relation to the draft plan variation until the committee of the Legislative Assembly has reported on the variation, unless the committee has not reported on the variation by the end of the period of six months starting on the day after the day the variation is referred.⁷
- 1.8 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.⁸ If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.⁹ 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.¹⁰
- 1.9 If the Minister does not refer a draft plan variation to an appropriate committee of the Legislative Assembly, the Committee is not prevented from considering the draft plan variation documents.¹¹

⁶ *Planning and Development Act 2007*, section 73.

⁷ *Planning and Development Act 2007*, section 75.

⁸ *Planning and Development Act 2007*, sub-section 76(4)a.

⁹ *Planning and Development Act 2007*, section 79.

¹⁰ *Planning and Development Act 2007*, section 83.

¹¹ *Planning and Development Act 2007*, section 73(3).

2 THE PLANNING VARIATION

Overview

- 2.1 The proposed variation to the Territory Plan No 288 includes two parts outlined below:
- 1) Changes to *the Residential Zones Multi-Unit Housing Development Code Part A(5)*; and
 - 2) Lyons Estate Redevelopment – changes to the zoning for Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons.

1) Changes to Part A (5) of the *Residential Zones Multi-Unit Housing Development Code*

Background

- 2.2 Development codes are a part of the Territory Plan and are intended to provide additional planning, design and environmental controls to support zone objectives and the assessable uses in development tables. The codes are used by ACTPLA to assess development applications and, therefore, also provide guidance to intending applicants in designing their developments and preparing their development applications. Each code's controls are expressed as either rules, which are generally definitive and quantitative, or as qualitative criteria.¹²
- 2.3 The *Residential Zones Multi-Unit Housing Development Code* applies to development for multi unit housing in ACT Residential Zones; being RZ1 – Suburban Zones, RZ2 – Suburban Core Zones, RZ3 - Urban Residential Zones, RZ4 – Medium Density Zones and RZ5 - High Density Zones.

¹² 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p1.

2.4 Part A(5) of the *Residential Zones Multi-Unit Housing Development Code* outlines the Building and Site Controls for RZ5 zones, such as building height rules, to ensure buildings are designed and sited to:

- i) provide privacy between neighbours and between occupants and the public
- ii) provide adequate light and natural ventilation between dwellings
- iii) provide opportunities for additional landscaping and to deliver quality open space
- iv) enhance the streetscape character in existing areas
- v) establish appropriate and attractive streetscapes in new residential areas

and to ensure the amenity of surrounding properties is optimised, particularly in relation to privacy, overshadowing and solar access.¹³

2.5 RZ5 zones are high density residential zones that aim to:

- a) Create a wide range of affordable and sustainable housing choices within a high density residential environment to accommodate population growth and meet changing household and community needs
- b) Provide increased opportunities for high density residential development, particularly in areas close to commercial and employment centers and along major transport corridors
- c) Create an attractive and vibrant living environment with a high standard of residential amenity in a highly urbanised setting
- d) Provide opportunities for home based employment consistent with residential amenity
- e) Provide for a limited range of small-scale facilities to meet local needs consistent with residential amenity
- f) Promote energy efficiency and conservation and sustainable water use.¹⁴

¹³ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p17.

¹⁴ 'RZ5 – High Density Residential Zone Objectives', *Territory Plan 2008*, Part 3.1, p1.

The Variation

- 2.6 As a result of a review by the ACT Planning and Land Authority (ACTPLA) of height limits for Residential RZ5 zones, this variation proposes to amend the Territory Plan *Residential Zones Multi-Unit Housing Development Code Part A(5)* to include a new building height policy.
- 2.7 The new policy would permit building heights of up to six storeys in future RZ5 zoned areas Territory-wide, where specific criteria are addressed. The code currently restricts the buildings in RZ5 zones to a maximum of three storeys which is the same height limit for RZ4 zones.
- 2.8 There are also currently some exemptions and site specific rules which allow for increased heights above three storeys in RZ5 zones in Kingston/Griffith and Belconnen, subject to specific Rules and Criteria in the development code (Rules R25, R26, R26A and Criteria C25 and C26A).
- 2.9 The Draft Variation does not propose to change the building height restrictions that apply to existing RZ5 zones. Existing RZ5 Zones are in Belconnen and Kingston/Griffith only.
- 2.10 The Draft Variation also proposes a site specific rule (Rule R27A) to allow a maximum of ten storeys in height within a 60m radius of the corner of Melrose Drive and Launceston Street.

2) Changes to the zoning for Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons

- 2.11 Part two of the variation proposes to substitute the RZ4 (Medium Density Residential) zoning on Blocks 3 and 4, Section 69 Lyons and Block 8, Section 47 Lyons with RZ5 (High Density Residential) zoning.
- 2.12 Blocks 3 and 4 section 69 Lyons, formerly the site of the Burnie Court public housing estate, are being redeveloped through a joint venture between the ACT Commissioner for Housing and Hindmarsh Living (joint venture partners). The latest version of the concept plan developed by the joint venture partners proposes heights beyond the three storey maximum allowed under the existing RZ4 zoning.
- 2.13 The variation to the Territory Plan aims to facilitate the construction of the

residential/retirement development, allowing for a range of four to six storey buildings along the Melrose Drive part of the site. Part 1 of this variation (Rule 27A) would also enable a building up to 10 storeys to be built on the corner of Melrose Drive and Launceston Street as part of the residential development.

Consultation by the ACT Planning and Land Authority

- 2.14 On 4 July 2008 ACTPLA released the Draft Variation for public comment, inviting comments until 11 August 2008. ACTPLA received 34 written submissions, 29 from individuals, four from organisations and one petition signed by 53 people.
- 2.15 The key issues of public concern related chiefly to the scale of potential development on the site including:
- concerns about overshadowing, solar access and possible wind tunnel effects of taller buildings;
 - height transitions between the town centre and the suburb of Lyons;
 - impact of development on pedestrian, traffic and parking requirements;
 - concerns with the consultation processes undertaken by the proponent in relation to concept planning.¹⁵
- 2.16 No changes were made to the exhibited Draft Variation following analysis of the public comments received during consultation.

Consultation by the Proponent

- 2.17 The Committee heard that the joint venture partners undertook around three years of community consultation in developing its draft proposal for the Lyons site. The parties approached Woden Valley Community Council (WVCC) about how to best go about their consultation and then used:

¹⁵ ACTPLA, *Draft Variation to the Territory Plan No.288*, January 2009, p10.

a combination of letterboxing the contacts provided by the WVCC and public advertisements to invite a group of people to come along to see presentations on the development.¹⁶

2.18 The Committee was also advised that an email group was set up from the attendees to inform them of consultation meetings and to report back on concerns and progress against issues raised at meetings. Around 51 Lyons residents participated in the consultation.¹⁷

2.19 The Committee heard that it was a thorough consultation and ‘one of the better consultations’ one hearing witness had experienced.¹⁸

Consultation by the Standing Committee on Planning, Public Works and Territory and Municipal Services

2.20 On 28 January 2009, pursuant to section 73 of the *Planning and Development Act 2007*, the Minister for Planning, Mr Andrew Barr MLA, referred Draft Variation to the Territory Plan No 288 to the Standing Committee on Planning, Public Works and Territory and Municipal Services for consideration and subsequent report to the ACT Legislative Assembly.¹⁹

2.21 The Committee considered the submissions on Draft Variation 288 lodged in response to ACTPLA’s statutory consultation process.

2.22 An invitation for public submissions was advertised in *The Canberra Times* on 21 February 2009 and in *The Chronicle* on 24 February 2009. The Committee also invited a wide range of stakeholders to provide written submissions on the proposed Draft Variation by 30 March 2009. Further comments specifically on the changes to RZ5 height rules were invited from stakeholders on 13 May 2009, closing 1 June 2009.

¹⁶ *Transcript of Evidence*, 7 April 2009, p50.

¹⁷ *Transcript of Evidence*, 7 April 2009, pp50-51.

¹⁸ *Transcript of Evidence*, 30 April 2009, p55.

¹⁹ Letter from the Minister for Planning to the Standing Committee on Planning, Public Works and Territory and Municipal Services, dated 28 January 2009.

- 2.23 Representatives from ACTPLA provided the Committee with a briefing on the Draft Variation on 3 March 2009 to assist the Committee with its inquiry.
- 2.24 Additionally, the Committee conducted three public hearings on 20 March 2009, 7 April 2009 and 30 April 2009 and took evidence from the Planning Institute of Australia (ACT), Mr Derek Wrigley, representatives from the joint venture, CB Richard Ellis, Woden Valley Community Council, the Minister for Planning and ACTPLA officials. A list of submissions reviewed and witnesses attending the hearings are at Appendix A.

Submissions

- 2.25 The majority of submissions to ACTPLA and the Committee regarding Draft Variation No 288 were site specific, relating to the combined impact of changing the zoning for Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons to High Density Residential (RZ5) and, therefore, the impact of changes to the height restrictions for RZ5 zones in the Residential Zones Multi-Unit Housing Development Code Part A (5) on the Lyons site.
- 2.26 A small number of submissions also discussed the territory-wide implications of the changes to the Residential Zones Multi-Unit Housing Development Code Part A (5).
- 2.27 Submissions to the Committee also raised concerns that the changes to the Residential Zones Multi-Unit Housing Development Code Part A(5) were not dealt with as a separate Territory Plan variation from the Lyons site, particularly as the code changes to Rule 25 and Criteria C25 have territory-wide implications.²⁰ Concerns were also raised that the Draft Variation was chiefly promoted in the 'context of the Lyons site' which may have obscured the wider implications of the variation.²¹
- 2.28 For the purposes of this Inquiry, the Committee has reviewed the component parts of Draft Variation 288 separately and structured this report accordingly.

²⁰ Submission 9 p1; Submission 10b.

²¹ Submission 10b.

Planning Study

- 2.29 The Committee also notes the perception held by some submitters and witnesses that Planning Studies are not an independent assessment of a proposed Territory Plan Variations.²²
- 2.30 The Committee was advised that the consultant's role in preparing a planning is to assess the proposal against the requirements of the territory plan on behalf of the proponent, not 'to be an unbridled champion for a particular proposal'.²³
- 2.31 Currently, where a proponent proposes a variation, ACTPLA requests that the proponent prepare a Planning Study to review the merits of the proposal and ACTPLA sets the scope of the study. The proponent sources a consultant with the expertise to undertake the Planning Study and pays for the work. The study is then used by ACTPLA, in conjunction with its own expertise, to assess the proposed variation and determine if it should proceed.²⁴
- 2.32 The Committee acknowledges that having the proponent source and pay for a consultant to prepare the Planning Studies may create a public perception that a consultant is not assessing a project independently.
- 2.33 The Committee believes that, rather than being commissioned by the proponent, ACTPLA should consider commissioning Planning Studies itself, similar to the process adopted by Queanbeyan City Council.²⁵ When a proponent proposes a variation, the proponent could pay ACTPLA for the cost of the study and ACTPLA would then commission a consultant to prepare the planning study.
- 2.34 ACTPLA could even consider establishing a panel contract via a public tender process for the provision of the above Planning Study services, increasing transparency for the community of the purpose of those studies and assuring the community of the consultants' expertise.

²² *Transcript of Evidence*, 30 April 2009, pp54-55; Submission 1; Submission 4.

²³ *Transcript of Evidence*, 7 April 2009, p34.

²⁴ *Transcript of Evidence*, 7 April 2009, pp21-22 & 34-35.

²⁵ *Transcript of Evidence*, 7 April 2009, p35.

- 2.35 By administering Planning Studies in this manner, ACTPLA would protect consultants from perceptions and claims of bias and ensure an independent assessment.

RECOMMENDATION 1

- 2.36 **The Committee recommends that the ACT Planning and Land Authority commission all Planning Studies itself and, where a Territory Plan Variation is initiated by request from a proponent, require the proponent to fund the cost of the study.**

3 PART A (5) OF THE RESIDENTIAL MULTI-UNIT HOUSING DEVELOPMENT CODE

Rule R25 and Criteria C25

- 3.1 The changes to Rule R25 and Criteria C25 will enable developments up to six storeys high to be built in any future RZ5 zones such as those proposed for the Molonglo Valley region. Existing RZ5 zones are controlled by site-specific policies.
- 3.2 Concerns were raised in submissions to the Committee about the effect of the changes to the Multi-Unit Housing Development Code Part A (5) on the whole of the Territory. Submissions were particularly concerned that the changes to the Code will lead to many other medium density zones in the ACT being rezoned to high density and that a change to the Lyons site would be the 'thin edge of the wedge' for increased RZ5 development.²⁶
- 3.3 The only RZ5 zones in the ACT currently are Kingston/Griffith Section 25 Block 12 and Section 26 Block 47; Belconnen Section 66, Section 67 Block 3 and part Block 2, and Section 88 part Block 1; and Belconnen Section 55 Block 37.
- 3.4 The Committee notes that the creation of any future RZ5 zones would be subject to the Territory Plan variation processes set out in the *Planning and Development Act 2007* including public consultation and consideration by the relevant committee of the ACT Legislative Assembly.

RZ5 compared to RZ4 Zones

- 3.5 The Committee reviewed the current Zone Objectives, Development Tables and zone specific Building and Site Controls for both RZ4 and RZ5 Zones.

²⁶ Submission 2 p4; Submission 4b; Submission 9; Submission 10.

Objectives

- 3.6 The zone objectives for RZ4 and RZ5 are relatively similar, other than references to ‘high density’ for RZ5 zones and ‘medium density’ for RZ4 zones. However, two particular zone objectives provide some differentiation between the two zone types:

Objective c) for RZ5 zones is to ‘create an attractive and vibrant living environment with a high standard of residential amenity in a **highly urbanised setting**’.

Objectives b) for RZ4 zones is to ‘ensure development respects and contributes to the **neighbourhood and landscape character of residential areas** whilst carefully managing change in suitable locations’.

- 3.7 The full text of the zone objectives is at Appendix C.

Development Tables

- 3.8 The Committee notes that there is no difference between the allowable development types in RZ4 and RZ5 zones, except site-specific developments for Barton Section 17 Block 4 and RZ4 inner North Canberra.²⁷

Building and Site Controls

- 3.9 The Building and Site Controls for RZ4 zones in the Multi-unit Housing Development Code include an additional intent ‘To provide for a range of residential forms that respect the residential character of the locality’ which is not included in the intent for RZ5 zones.²⁸

Height

- 3.10 There is currently no difference between the height limits in RZ4 and RZ5 Zones (included below), except for site-specific arrangements in Kingston/Griiffith and Belconnen, and the ability for an attic or basement to be included in RZ4 zoned developments.

²⁷ ‘RZ5 – High Density Residential Zone Objectives’, *Territory Plan 2008*, Part 3.1, p1 & ‘RZ4 – Medium Density Residential Zone Objectives’, *Territory Plan 2008*, Part 3.1, p1.

²⁸ ‘Residential Zones – Multi-Unit Housing Development Code’, *Territory Plan 2008*, Part 3.3, p15.

Height Rules and Criteria RZ4 Zones²⁹

2.2 Height (number of storeys)	
R22 Buildings do not exceed 3 storeys. An attic and/or basement may be permitted in addition to 3 storeys.	This is a mandatory requirement. There is no applicable criterion.

Height Rules and Criteria RZ5 Zones³⁰

2.1 Height	
R25 Buildings do not exceed 3 storeys. <u>Exception:</u> The restriction on height does not apply to: a) Kingston/Griffith Section 25 Block 12 and Section 26 Block 47 b) Belconnen Section 66, Section 67 Block 3, and part Block 2, and Section 88 part Block 1 c) Belconnen Section 55 Block 37	C25 Buildings to be limited in height to ensure compatibility with adjacent development and may include a basement and/or an attic.

Committee Comments

- 3.11 The Committee notes that there is currently very little difference between the provisions for RZ4 and RZ5 developments other than a small number of site-specific requirements. The existing provisions for the two zones do not enable height to be used to distinguish RZ5 from RZ4 zones.
- 3.12 The Committee also notes that the Canberra Spatial Plan provides for increased residential intensification along major transport corridors and within a 7.5 kilometre radius of the city centre:

Higher density residential developments will be targeted to specific areas. Rather than being dispersed throughout the suburbs, intensification will occur at major employment centres (Civic, the town centres and Barton)...³¹

²⁹ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p15.

³⁰ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, pp17-18.

³¹ Australian Capital Territory, *Canberra Spatial Plan*, 2004, p31.

- 3.13 In this context, the Committee considers that raising the height limit for RZ5 zones will provide ACTPLA with more distinct zoning options when planning future urban development areas. It will also distinguish RZ5 zones as being high density, consistent with the zone objective to enable development of 'highly urbanised settings'.
- 3.14 The Committee also notes that Criteria 25 (d) of the Multi-Unit Housing Development Code applies only to 'development on adjoining residential land' and not for developments within a single site. The Committee is concerned that, as multi-unit developments often incorporate multiple building elements on a single site, this criterion does not appear to be adequate to protect the amenity for residents of future multi-unit developments.

RECOMMENDATION 2

- 3.15 **The Committee recommends that Criteria C25 (d) of the Multi-Unit Housing Development Code be amended to protect the solar access requirements of developments on the same land, in addition to protecting adjacent land.**

RECOMMENDATION 3

- 3.16 **The Committee recommends that the proposed changes to Rule R25 and Criteria C25 of the Residential Zones Multi-Unit Housing Development Code Part A (5) proceed.**

4 BLOCK 3 AND 4 SECTION 69 LYONS AND BLOCK 8 SECTION 47 LYONS

- 4.1 Most submissions to the Committee raised concerns with the proposed zoning change in zoning to Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons, particularly in regard to the site specific changes to the Multi-Unit Housing Development Code that would allow a building of up to 10 storeys to be developed on the north-east corner of Block 4. These are discussed in detail below.
- 4.2 The Committee notes that Block 8, Section 47 Lyons has already been developed with the 'Freycinet' – a development of 24 public housing retirement units. The Freycinet is a three storey development with basement parking. There is no current proposal to increase the height of this development, although it is still proposed to be rezoned to RZ5.
- 4.3 The Committee also notes that a development application for Stage One of development on Block 3, Section 69 Lyons was approved in April 2008 and the construction of the single storey villas and a block of 2-3 storey self care apartments has begun.

Site Planning

The Canberra Spatial Plan

- 4.4 As noted earlier, increasing higher-density residential development around town centres including Woden is in-keeping with the Canberra Spatial Plan. It encourages people to use alternative transport modes including walking and public transport and buyers may be motivated to buy in this location because they work in Woden.³²

³² ACTPLA, *Report on Consultation – Draft Variation to the Territory Plan No 288*, Dec 2008, p20.

Woden Town Centre Master Plan 2004

4.5 The Woden Town Centre Master Plan foreshadowed the use of the Lyons site as a location to increase housing choice.

4.6 Whilst the Woden Town Centre Master Plan does not consider in detail any areas to the west of Melrose Drive, it does make mention of the Lyons Section 69 (known then as Sections 66, 67 and 68). The Master Plan states:

The original planning for and construction in Woden excluded residential from the town core. Walking distance to a range of activities, access to public transport, changing housing needs within the community and good outlooks and environmental amenity create conditions that are conducive to the introduction of quality apartments within and around Woden's core.

In addition to opportunities for housing in mixed use inner core developments residential areas on the eastern side of Yarralumla Creek and west of Melrose Drive in vacant land in Lyons Sections 47, 66, 67 & 68 provide setting for new housing choices in and around Woden.³³

4.7 The Master Plan does not mention scale or density of possible residential development on the site.

2001 Section Master Plan

4.8 The Committee notes that a section Master Plan was prepared in 2001 for the Burnie Court Redevelopment including draft development conditions, following extensive community consultation. However, in 2003 when the Commissioner for Housing offered a portion of the site for sale 'in accordance with the development conditions set out in the master plan'³⁴ it was passed in at auction because it did not meet the reserve price. The 2001 Master Plan would have resulted in much higher site coverage than the current joint venture concept plan.

4.9 The sale of the site in 2004 to the joint venture parties did not require the site to be developed consistent with the 2001 Master Plan.³⁵

³³ ACTPLA, *Woden Town Centre Master Plan*, 2004, p45.

³⁴ ACTPLA, *Draft Variation to the Territory Plan No.288*, January 2009, p4.

³⁵ ACTPLA, *Report on Consultation – Draft Variation to the Territory Plan No 288*, Dec 2008, p21.

Neighbourhood and Site Planning

- 4.10 Some submissions to the Committee considered that a comprehensive neighbourhood plan or 'precinct plan' is needed for the site and for the suburb of Lyons, created in consultation with the Lyons community, to guide suburb development into the future.³⁶
- 4.11 When the revised Territory Plan commenced on 31 March 2008, many elements of existing neighbourhood plans were incorporated in the relevant development Territory Plan development codes. No neighbourhood plans have been created since 31 March 2008. The Code requires that 'where a Neighbourhood Plan exists, development demonstrates response to the key strategies and actions of the relevant Neighbourhood Plan'.³⁷
- 4.12 The Committee believes that neighbourhood planning is an effective tool, developed in collaboration between the government and the residents, to provide direction for the future of individual neighbourhoods. Neighbourhood plans give local communities the chance to comment on what characteristics of their suburb are important to them without needing to comment on planning and development initiatives on a site-by-site or project-by-project basis.

RZ4 to RZ5 Zoning Change

- 4.13 The proposal to change zoning for Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons to RZ5 zoning, which would enable development up to six storeys across most of the site, was of concern to many submitters and witnesses.³⁸ Issues raised included site density, the appropriateness of an RZ5 zoning in the context of the character of Lyons and the need for transition of building heights from the Melrose Drive side frontage to the Burnie Street frontage.

³⁶ Submission 2, pp2 & 7; Submission 7; *Transcript of Evidence*, 30 April 2009, p57.

³⁷ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p45.

³⁸ Submission 3; Submission 4; Submission 5; Submission 7; Submission 8.

- 4.14 Several submissions highlighted concerns that rezoning the Lyons site to RZ5 High Density residential was not appropriate because it would not provide an adequate transition between the RZ2 Suburban Core of Lyons and the Commercial CZ2 business zone of Woden Town Centre.³⁹ Several submissions also wanted the Territory Plan to incorporate requirements for a stepping down of height across the site from Melrose Drive to Burnie Street.⁴⁰
- 4.15 Both the Planning Institute of Australia (ACT) and the WVCC would prefer to see development for the site in line with the 2001 section Master Plan, with building heights limited to four storeys to maximise solar access and minimise the need for lifts. However, both organisations supported development up to six storeys along Melrose Drive frontage to achieve increased site density.⁴¹
- 4.16 The Committee also heard that a lower height limit was preferable for the remainder of the site, with a number of submitters supporting a limit of four or five storeys.⁴²
- 4.17 The Planning Institute of Australia (ACT) also proposed to the Committee that:
- Building height should be no more than two storeys adjacent to Burnie Street (rather than the three storeys proposed in this area, in order to provide a higher level of visual compatibility with residential development on the west side of Burnie Street).⁴³
- 4.18 The Committee notes that the site is currently zoned RZ4 – Medium Density which allows development up to three storeys in height with an additional basement or attic storey allowable. The Committee does not believe it is necessary to reduce allowable height limits on the site below that of the existing RZ4 standard.

³⁹ Submission 4; Submission 7; Submission 8; Submission 10.

⁴⁰ Submission 2 p8; Submission 5; *Transcript of Evidence*, 20 March 2009, pp11-12.

⁴¹ Submission 2 p3; *Transcript of Evidence*, 30 April 2009, p63 and *Transcript of Evidence*, 20 March 2009, p17.

⁴² *Transcript of Evidence*, 30 April 2009, p63 and *Transcript of Evidence*, 20 March 2009, p17; Submission 2 pp8-9; Submission 3; Submission 7; Submission 8.

⁴³ Submission 1.

- 4.19 The Burnie Street side of the development will be limited to three storeys within the proposed Territory Plan rules for setbacks from other zone types, as illustrated at Appendix B. The Committee considers that a 50m setback is adequate to provide transition between the RZ2 Suburban Core residential area of Lyons and the remainder of the site. Stage One of the development has also resulted in a number of one storey units being built on the Burnie Street frontage, creating a degree of transition across the site.

Committee Comments

- 4.20 The Committee considers that a six storey height limit is appropriate for the site as it is well placed to provide increased residential choice in close proximity to the Woden Town Centre. The provisions of Rule R25 also provide for an adequate transition between the RZ2 Residential and CZ3 Commercial zones.

RECOMMENDATION 4

- 4.21 **The Committee recommends that the proposed variation to the Territory Plan to re-zone Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons to RZ5 high density residential zoning proceed.**

Site Density

- 4.22 Submissions to the Committee and hearing witnesses also raised concerns about the site density, which refers to ‘the ratio of dwellings to the area of the site they occupy’.⁴⁴ Most submissions were supportive of densification near town centres generally, where done sustainably, but many did not believe this site was appropriate.⁴⁵
- 4.23 The Committee was advised that, despite the proposed zoning change for the site from RZ4 Medium Density zoning to RZ5 High Density zoning, the planned development for the Lyons site will not actually increase the site

⁴⁴ ‘Residential Subdivision Development Code’, *Territory Plan 2008*, p3.

⁴⁵ Submission 2 pp5-6; Submission 7.

density. The Woden Valley Community Council, for example, emphasised to the Committee that this site is very valuable and could support a much denser development.⁴⁶ ACTPLA also comments in the Report on Consultation that:

It is considered by the ACTPLA that given the close proximity to services, facilities and employment locations, the site is suitable for higher density residential development.⁴⁷

- 4.24 The Committee notes, however, that the lease and development conditions limit development to 240 residential units, around the same number as the former Burnie Court public housing development.⁴⁸ The Committee is concerned that the Draft Variation, if implemented, would enable the site to be developed generally up six storeys but the lease conditions do not practically allow for site density to be increased. The WVCC also felt that the site can accommodate the current allowable density without the need for a 10 storey developments.⁴⁹
- 4.25 Taller buildings do not directly equate to increased density. The Committee believes that the site is prime land for densification near a town centre, and if the chief justification for rezoning the site to RZ5 High Density Zone is to increase site density, then the lease and development conditions should be redrafted in accordance with that thinking.

Site Yield

- 4.26 As mentioned above, the current lease on the site allows development of around 240 residential units, consisting of 120 units in the retirement complex and 120 in the general residential. The Committee was advised that if the change to RZ5 zoning (with the six storey limit) is not implemented then, to meet the yield required a larger numbers of three storey buildings would 'cover' the land and not create 'diversity of housing'.⁵⁰

⁴⁶ *Transcript of Evidence*, 30 April 2009, p60.

⁴⁷ ACTPLA, *Report on Consultation – Draft Variation to the Territory Plan No 288*, Dec 2008, p15.

⁴⁸ *Transcript of Evidence*, 7 April 2009, p39 and *Transcript of Evidence*, 30 April 2009, pp56 & 58.

⁴⁹ Submission 2 p5.

⁵⁰ *Transcript of Evidence*, 7 April 2009, p47.

- 4.27 The joint venture partners are attempting to minimise site building coverage by increasing the height of some building elements to six storeys. The Committee also heard any reduction in the number of units on the site would result in reduced funds to spend on public housing elsewhere in the ACT as the profits from the joint venture will be redirected to increasing the public housing stock.⁵¹

Staged Development

- 4.28 The Committee notes that the site yield and density potential have been seriously affected by the way development on Blocks 3 and 4 Section 69 Lyons has been undertaken in two parts.⁵²
- 4.29 The Committee considers that ACTPLA's approval of a Development Application on part of the site before the proposed Territory Plan changes in Draft Variation 288 have been passed may have limited ACTPLA's ability to adequately scrutinise Stage Two of the development in relation to Stage One.

Rule R27A - 10 Storey Height Limit on part Block 4 Section 69 Lyons

- 4.30 The most significant area of contention with the Draft Variation to the Territory Plan relates to the proposed addition of Rule R27A which states that:
- On Block 4 Section 69 Lyons within a 60m radius of the midpoint of the curve of the property boundary at the intersection of Melrose Drive and Launceston Street, the maximum building height does not exceed 10 storeys.
- 4.31 ACTPLA's reasoning for the proposed variation is that
- The ten storey building introduces a level of interest that has a stronger visual impact, which accentuates the Melrose Drive/Launceston Street intersection. It will relate to future development of nearby town centre sites⁵³

⁵¹ *Transcript of Evidence*, 7 April 2009, p52.

⁵² Submission 2 pp4 & 11.

⁵³ ACTPLA, *Report on Consultation – Draft Variation to the Territory Plan No 288*, Dec 2008, p13.

Gateway Concept

- 4.32 Whilst the concept of ‘gateway’ developments or ‘marker buildings’ have been used in Woden Valley previously, the Committee received many concerns that such a building was not appropriate for Block 4 Section 69 Lyons.⁵⁴
- 4.33 The Committee heard that a marker building is not a ‘strong urban design justification for providing a 10-storey building’ on the north east corner of the site, particularly where ‘it is going to have negative impacts on the site in terms of amenity’.⁵⁵ This was particularly of concern to witnesses as the site is not considered to be an entrance to Woden Valley⁵⁶ so the proposal to allow a marker building does not offer a ‘compelling urban design case’⁵⁷.
- 4.34 The Planning Study for Draft Variation 288 describes how Melrose Drive ‘defines the boundary between the predominantly commercial uses in the Town Centre and the residential suburb of Lyons’.⁵⁸ Many submissions felt that this boundary should be emphasised by limiting the building heights in Lyons, compared to the height of developments in the town centre which are on the increase.⁵⁹
- 4.35 The Committee also heard concerns that a 10 storey building would actually be higher (above sea level) than buildings over 10 storeys high in the town centre because the town centre is at a lower ground level than the Lyons site, creating a significant visual impact.⁶⁰

⁵⁴ Submission 1; Submission 2 p6 & 10; Submission 3; Submission 7; Submission 8; Submission 10.

⁵⁵ *Transcript of Evidence*, 20 March 2009, p15; *Transcript of Evidence*, 30 April 2009, p59.

⁵⁶ *Transcript of Evidence*, 30 April 2009, p56 & 62.

⁵⁷ Submission 1 p2.

⁵⁸ CBRE, *Planning Study in support of Draft Territory Plan Variation Lyons Estate Redevelopment*, 2007, p48.

⁵⁹ *Transcript of Evidence*, 30 April 2009, p56; Submission 2; Submission 3; Submission 4; Submission 7; Submission 8.

⁶⁰ *Transcript of Evidence*, 30 April 2009, p61; Submission 2 p9.

Tower location

- 4.36 The Committee was advised that allowing developments up to 10 storeys on the north east corner of the site was concerning from a design perspective, particularly with respects to amenity of the site in terms of noise, solar access and overshadowing.
- 4.37 Most submissions were particularly concerned that any 10 storey development on the nominated corner of the site would ‘maximise overshadowing’ of the remaining site including a large portion of the open space and the single storey retirement villas.⁶¹ The Planning Institute of Australia (ACT) advised the Committee that the north east corner of a site was ‘the last place you would normally put a high-rise building’⁶²
- 4.38 The Committee also heard a number of alternatives to the proposed Rule R27A including moving the 10 storey site-specific zone to the south east corner of the site⁶³ (although it is acknowledged that this may the cause overshadowing of adjacent sites), or achieving the density by increasing the height along Melrose Drive to six storeys.⁶⁴
- 4.39 A few submitters also expressed dissatisfaction with the way their concerns about the 10 storey element had been addressed in the report on Consultation. The Draft Variation was not amended following ACTPLA’s consultation despite the majority of comments being against a high-rise development on the site.⁶⁵
- 4.40 The Committee notes that the Planning Study provides a shadow analysis of the current concept plan for the site. The study says that solar access requirements would be met by the design, stating that:

⁶¹ Submission 1; Submission 2; Submission 3; Submission 5, Submission 8; Submission 10; Submission 12 and *Transcript of Evidence*, 30 April 2009, p59.

⁶² *Transcript of Evidence*, 20 March 2009, p12.

⁶³ *Transcript of Evidence*, 30 April 2009, 63 and *Transcript of Evidence*, 20 March 2009, p5.

⁶⁴ *Transcript of Evidence*, 20 March 2009, p12.

⁶⁵ Submission 1; Submission 2 p1; Submission 10.

The design and planning of this proposal set out to ensure that the majority of units have a strong northerly orientation at the main frontage, with the remainder predominantly facing east or west.⁶⁶

- 4.41 The Committee notes that compliance with solar access requirements will be assessed in the Development Application stage. The Committee also discusses solar access issues further in Part 5 of this report.

Committee Comments

- 4.42 The Committee supports the proposed Rule R27A of the Residential Zones Multi-Unit Housing Development Code because it will enable the site to be used, theoretically, to increase housing density near the Woden Town Centre. The variation is in-keeping with the direction of the Canberra Spatial Plan, providing for increased residential intensification near town centres and major transport routes and to promote increased utilisation of nearby services. However, the Committee feels that this change in zoning should only be approved if accompanied by a change in allowable site density to enable **real** residential densification to occur.
- 4.43 The Committee is further concerned that any increase in density will only be applied only to the Melrose Drive frontage of the site and not spread appropriately across the site because of the two-stage development application process which has already resulted in development taking place on a large portion of the site. Increased density on the site should not solely be applied to buildings on the Melrose Drive frontage.
- 4.44 If the ability to increase density on the site is not provided in the lease and development conditions for Block 4 Section 69 Lyons then a 10 storey building is not considered necessary on part of that block as the desired housing numbers can be adequately provided for under the RZ5 zoning.

⁶⁶ CBRE, *Planning Study in support of Draft Territory Plan Variation Lyons Estate Redevelopment*, 2007, p38.

RECOMMENDATION 5

- 4.45 **The Committee recommends that ACTPLA increase the density allowances in the lease and development conditions for Blocks 3 and 4 Section 69 Lyons to enable real densification on the site.**

RECOMMENDATION 6

- 4.46 **The Committee recommends that the proposed variation to the Territory Plan to include Rule R27A, allowing development up to 10 storeys on part of Block 4 Section 69 Lyons, should proceed subject to Recommendation 5 being agreed.**

5 LYONS ESTATE - CONCEPT PLANNING

- 5.1 The Committee's resolution of appointment establishes this Committee to 'examine matters related to planning' which can include matters of concept planning, development assessment, planning policy and the Territory Plan etc.
- 5.2 The Draft Variation highlights that the variation is proposed in order to facilitate the particular development as set out in the concept plan (figure 1.1 of Draft Variation to the Territory Plan No.288). Whilst the Committee notes that concept planning issues for the Lyons site will be assessed at the Development Application stage, a number of issues raised in submissions to the Committee are of importance to this and other multi-unit developments. The Committee will therefore discuss some concerns with the concept plan raised in submissions.

Energy Efficiency

- 5.3 The majority of submissions to this inquiry were concerned that the proposed Lyons development does not adequately address energy efficiency and solar access, particularly for individual residential units, and the Committee is aware that these are important considerations for all multi-unit developments.⁶⁷
- 5.4 The Committee notes that the Building Code of Australia currently requires multi-unit developments to achieve a minimum 3 star energy rating for each unit and an average rating not less than 4 stars. The Lyons development will be assessed against these requirements at the Development Assessment stage.
- 5.5 Further, the Committee notes that the Council of Australian Governments (COAG) agree at its meeting of 30 April 2009 to:

An increase in energy efficiency requirements for new residential buildings to six stars, or equivalent, nationally in the 2010 update of the Building Code of

⁶⁷ *Transcript of Evidence*, 20 March 2009, pp2-6; Submission 2; Submission 3; Submission 5; Submission 7; Submission 8; Submission 12.

Australia, to be implemented by May 2011, as well as new efficiency requirements for hot-water systems and lighting.⁶⁸

- 5.6 The Committee hopes that the increase in efficiency requirements will apply to multi-unit residential developments as well as single residential houses.

Solar Access

- 5.7 The Committee notes that any development on Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons will be required to meet all relevant provisions of the Residential Zones Multi-Unit Housing Development Code, including rules around solar access.

- 5.8 The Planning Study in support of the Draft Variation states that the concept plan meets requirements that '**all residences** receive at least 3 hours of sunlight a day on June 21'⁶⁹, in accordance with Rule R86 of the Multi-Unit Housing Development Code. The rule requires that:

Development is sited to allow a minimum of three hours direct sunlight onto the floor or internal wall of the main daytime living area of the dwelling between the hours of 9.00am and 3.00pm on 21 June (winter solstice).

- 5.9 The Committee notes that by complying with Rule R86, the proponent is providing more than the minimum solar access requirements for the site. The Lyons site falls within the Woden District and therefore is subject to Rules and Criteria 221, 222 and 223 which requires that at least **70 per cent of apartments** receive a minimum three hours direct sunlight on main living areas and to the front of private open space between 9.00am and 3.00pm on the Winter Solstice (21 June).⁷⁰ This rule, compared to Rule 86, could result in apartments that do not receive 3 hours of direct sunlight a day.
- 5.10 The Committee regularly receives comments and concerns that the current solar access rules in the Multi-Unit Housing Development Code are inadequate for good passive solar housing design and that the prospect of only having '1 ½ hours of winter sun in the morning and 1 ½ hours of winter sun in

⁶⁸ COAG, *Communiqué 30 April 2009*, p8.

⁶⁹CBRE, *Planning Study in support of Draft Territory Plan Variation Lyons Estate Redevelopment*, 2007, p38.

⁷⁰ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p84.

the afternoon' would be generally unacceptable to any lay person.⁷¹

- 5.11 The Committee also acknowledges that ACTPLA is undertaking a review of the Territory Plan as part of its 'ACTPLAn' initiative, including a review of the single, multi-unit and residential subdivision development codes.
- 5.12 The Committee believes that the ACTPLAn review of the codes would be an ideal opportunity for ACTPLA to strengthen the requirements of the Residential Zones Multi-Unit Housing Development Code, such as solar access rules, to reflect increasing community and global concerns about climate change and the need to reduce greenhouse gas consumption through development of 'green buildings'. The solar access requirements should also ensure that increased energy efficiency ratings for residential properties agreed to by COAG can be achieved primarily through passive solar design.
- 5.13 The Committee also notes that environmental rating tools such as the new Green Star - Multi Unit Residential v1 environmental rating tool from the Green Building Council of Australia could be of assistance in assessing the energy efficiency of multi unit housing developments.

RECOMMENDATION 7

- 5.14 **The Committee recommends that ACTPLA, in its review of the Residential Zones Multi-Unit Housing Development Code as part of the 'ACTPLAn' initiative, take into account the need to improve the energy efficiency of multi-unit buildings, including the possibility of increasing the minimum solar access requirements.**

Lyons Development – Efficiency Initiatives

- 5.15 The Committee heard that the first stage of the development in Lyons will include a number of efficiency measures including the use of rainwater tanks for site irrigation, use of smart meters, heat exchange (heat-pump) hot water

⁷¹ *Transcript of Evidence*, 30 April 2009, p61; Submission 10.

system that will 'result in about a 60 per cent energy saving'.⁷² The developer is also in discussion with energy suppliers to secure solar panels for use on the site where suitable.⁷³

5.16 As discussed above, the Committee also notes that Stage Two of the Lyons redevelopment intends to comply with Rule R86 of the Residential Zones - Multi-Unit Housing Development Code, which will result in each apartment receiving the three hours minimum direct sunlight a day rather than only a percentage of the development.

5.17 The Committee commends the proponent for these initiatives.

Wind

5.18 A couple of submissions to the Committee and hearing witnesses also raised concerns about the possible wind shear effects from developments along Melrose Drive if buildings were six storeys high and were disappointed that a wind assessment was not undertaken as part of the Planning Study.⁷⁴

5.19 The Committee notes that wind mitigation is required under Criteria C210 of the Residential Zones - Multi-Unit Housing Development Code⁷⁵, requiring that 'external spaces between buildings are appropriately proportioned to contribute to visual privacy, solar access, wind mitigation, and amenity of outdoor spaces.' Those requirements would be assessed in the Development Application stage.

Noise Concerns

5.20 The Committee also heard that the corner of Melrose Drive and Launceston Street is a high traffic area and generates substantial noise.⁷⁶ Apartments facing those streets are therefore more likely to require fixed glazing to achieve adequate sound insulation which would increase reliance on air-conditioning

⁷² *Transcript of Evidence*, 7 April 2009, p44.

⁷³ Submission 6.

⁷⁴ Submission 2; Submission 3; Submission 7; *Transcript of Evidence*, 30 April 2009, p60.

⁷⁵ 'Residential Zones – Multi-Unit Housing Development Code', *Territory Plan 2008*, Part 3.3, p79.

⁷⁶ *Transcript of Evidence*, 20 March 2009, p5.

for adequate ventilation.⁷⁷

- 5.21 The Committee notes that Multi Unit developments are required to comply with the relevant sections of AS/NZS 3671, AS/NZS 2107, ACT Environment Protection Regulations 1997 and the ACT Draft Noise Management Guidelines 1996.

⁷⁷ *Transcript of Evidence*, 20 March 2009, p5.

6 OTHER ISSUES

Draft Variation structure and information

- 6.1 As highlighted earlier, submissions to the Committee raised concerns that the changes to the Residential Zones Multi-Unit Housing Development Code Part A(5) were not dealt with as a separate Territory Plan variation from the Lyons site and was promoted a chiefly a Lyons issue.⁷⁸ Whilst the Committee dealt with the component parts of Draft Variation288 separately and structured this report accordingly, the Committee considers that these issues should have been undertaken as separate variations to the Territory Plan.

RECOMMENDATION 8

- 6.2 **The Committee recommends that ACTPLA not combine multiple planning and zoning issues into a single Draft Variation in future unless all issues are specific to a single Zone type, Block, Section or group of Blocks. Territory-wide Variations to zoning requirements should be promoted as such.**
- 6.3 The Committee also supports the request in submissions that Draft Variation documentation should include more information on the current Territory Plan requirements to enable the public to better understand what the variation entails.⁷⁹

RECOMMENDATION 9

- 6.4 **The Committee recommends that future Draft Variation documentation include additional information on the current Territory Plan provisions, to assist the community to better understand the implications of the variation.**

⁷⁸ Submission 9; Submission 10b.

⁷⁹ Submission 9.

Accessibility of documentation

- 6.5 The Committee notes that some groups and individuals experienced difficulties accessing relevant documentation related to this Draft Variation, such as the Planning Study.⁸⁰ The Committee considers that it is extremely important for the community to have all relevant information in relation to planning proposals in order to make informed comment. The Committee also acknowledges that ACTPLA was unaware that the website link was not working at the time of consultation and fixed the problem immediately once it was aware.

RECOMMENDATION 10

- 6.6 **The Committee recommends that in future ACTPLA ensure all relevant documentation is available to the public during the statutory Draft Variation consultation period and that ACTPLA check that website links to those documents work.**

Chair

9 July 2009

⁸⁰ Submission 2 pp6-7; *Transcript of Evidence*, 30 April 2009, p54.

Appendix A Submissions and Hearings

List of Submissions

No.	Author
1	Planning Institute of Australia
2	Woden Valley Community Council
2b	Woden Valley Community Council - additional comments
3	Woden Community Services
4	Jack Kershaw
4b	Jack Kershaw – additional comments
5	David Menzel
6	DHCS and Hindmarsh
7	Tom and Shirley Lithgow
8	Eric and Valerie Yates
9	Jenny Stewart
10	Chris Erett
10b	Chris Erett – additional comments
11	CB Richard Ellis (V) Pty Ltd
12	Daryl, Colin and Nancye Crapp

Public Hearings

Friday, 20 March 2009

Mr Derek Wrigley - Retired architect, solar housing researcher and consultant

Mr Richard Johnston, President, Planning Institute of Australia (ACT Division)

Mr Hamish Sinclair, Vice President, Planning Institute of Australia (ACT)

Tuesday, 7 April 2009

Mr Andrew Barr MLA, Minister for Planning

Mr Neil Savery, Chief Planning Executive, ACTPLA

Ms Sonya Moser Team Leader, Territory Plan Variation Unit, ACTPLA

Mr Tony Adams, Senior Director Town Planning (Canberra), CB Richard Ellis

Mr David Collett, Director, Asset Management Branch, DHCS

Mr John Hindmarsh, Executive Chairman, Hindmarsh

Thursday, 30 April 2009

Ms Gina Pinkas, Planning Officer, Woden Valley Community Council

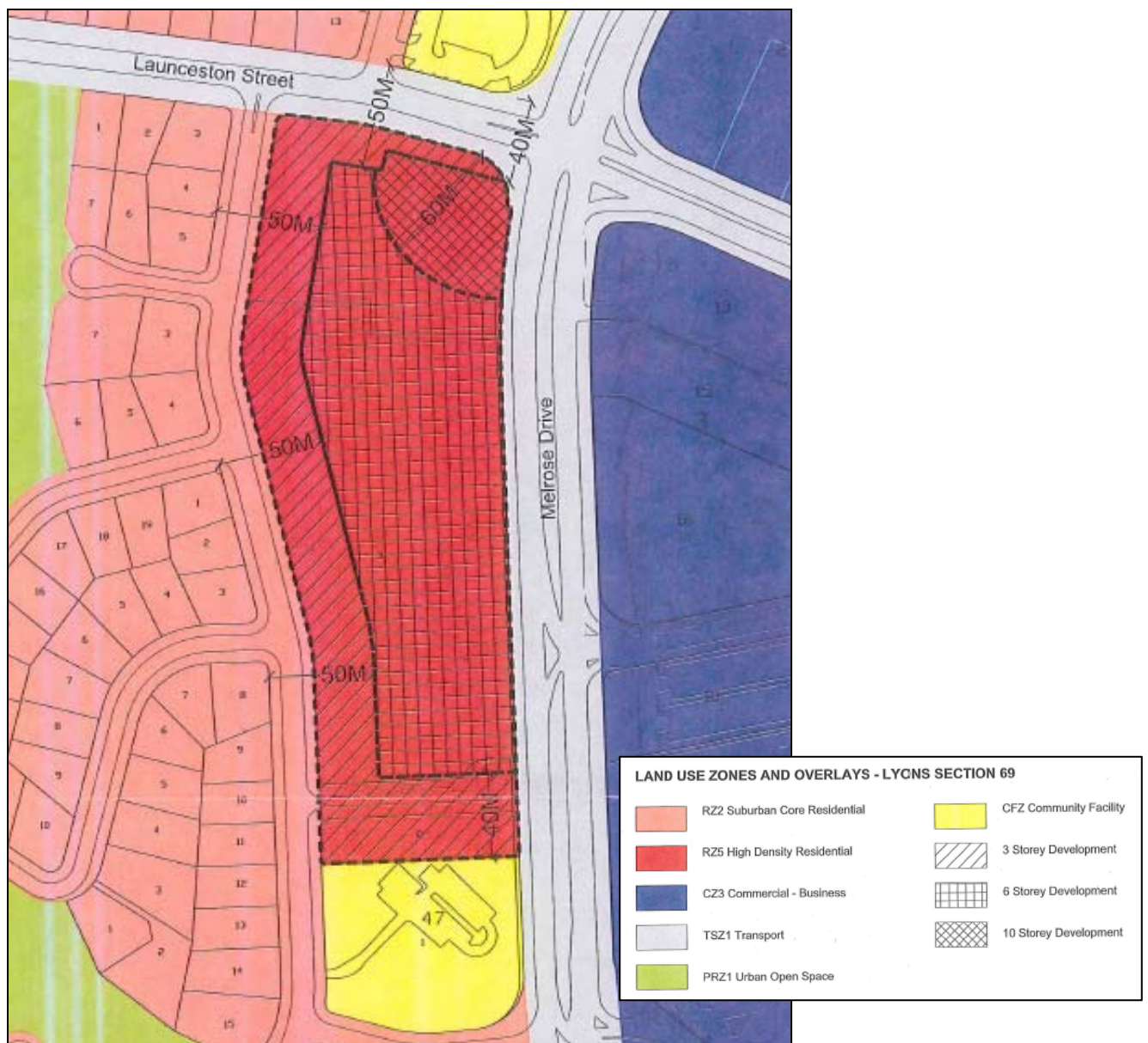
Ms Shirley Lithgow, Secretary, Woden Valley Community Council

Mr David Menzel, Former Chair, Woden Valley Community Council

Appendix B Land Use Zones and Overlays

Section 69 Lyons

This map indicates how the amended Rules and Criteria in Part A(5) of the *Residential Zones Multi-Unit Housing Development Code* for RZ5 (High Density Residential Zones) would apply to Blocks 3 and 4 Section 69 Lyons and Block 8 Section 47 Lyons, including the site specific rule R27A.



Appendix C RZ4 and RZ5 Zone Objectives

6.7 RZ5 zones are high density residential zones that aim to:

- a) Create a wide range of affordable and sustainable housing choices within a high density residential environment to accommodate population growth and meet changing household and community needs
- b) Provide increased opportunities for high density residential development, particularly in areas close to commercial and employment centers and along major transport corridors
- c) Create an attractive and vibrant living environment with a high standard of residential amenity in a highly urbanised setting
- d) Provide opportunities for home based employment consistent with residential amenity
- e) Provide for a limited range of small-scale facilities to meet local needs consistent with residential amenity
- f) Promote energy efficiency and conservation and sustainable water use.⁸¹

6.8 RZ4 zones are medium density residential zones that aim to:

- a) Create a wide range of affordable and sustainable housing choices within a medium density residential environment to accommodate population growth and meet changing household and community needs
- b) Ensure development respects and contributes to the neighbourhood and landscape character of residential areas whilst carefully managing change in suitable locations
- c) Provide increased opportunities for medium density residential development, particularly in areas close to commercial and employment centers and along major transport corridors
- d) Achieve developments with a high standard of residential amenity in medium-density areas
- e) Provide opportunities for home based employment consistent with residential amenity

⁸¹ 'RZ5 – High Density Residential Zone Objectives', *Territory Plan 2008*, Part 3.1, p1.

- f) Provide for a limited range of small-scale facilities to meet local needs consistent with residential amenity
- g) Promote energy efficiency and conservation and sustainable water use.⁸²

⁸² 'RZ4 – Medium Density Residential Zone Objectives', *Territory Plan 2008*, Part 3.1, p1.

Appendix D Additional Comments – Caroline Le Couteur MLA

**Standing Committee on Planning, Public Works and
Territory and Municipal Services
Draft Variation to the Territory Plan No.288**

**ADDITIONAL COMMENTS
By Caroline Le Couteur MLA**

In general, I support the Standing Committee on Planning, Public Works and Territory and Municipal Services Committee's (the Committee) recommendations with respect to DV288 as I believe that they will improve the planning process and in particular the outcomes on this block. I do not support Recommendation 6. However, in some areas I think they have not gone far enough to ensure the best use of one of the best blocks in Canberra. I will make a number of additional recommendations in this document.

History and current state of the site

The site of the Lyons Estate Redevelopment Proposal (Blocks 3 and 4 Section 69 Lyons) was originally developed during the mid 1970's and consisted of 264 units, mainly single bed-sitters, and was commonly known as Burnie Court. It was owned by ACT Housing who decided to demolish the complex in 2001 due to management issues.

A Master Plan for the site was prepared in 2001. This Plan allowed for 274 dwellings and a maximum height of 3 stories in accordance with the current height restrictions for the blocks. Most of the units had good solar access – ie they were north facing. Part of the block was offered for sale in 2003, with development conditions as set out in the Master Plan. The land was passed in at auction, as it did not meet the reserve price. This was surprising given the favorable economic conditions at the time. It appears that there has been a failure of LDA, ACT Housing and ACTPLA to realise the potential economic value of the site.

Subsequently the block boundaries were changed. In 2005 a joint venture entity consisting of Hindmarsh Living and the Commissioner for Housing was established for the development of the site.

So far the development on the block consists of 24 three storey public housing retirement units (Freycinet) at the southern end and 6 blocks of nearly finished single storey retirement units developed by the joint venture. These single storey units cover over two thirds of the site (Page 11 of the Planning Study) thus leading to the need for higher developments on the rest of the site to maintain even the previous density overall.

When the Committee asked why there was so much one storey development given that the previous development was three storeys we were told that single storey is demanded by the retirement market. However, Goodwin Village has been successful in its multi-storey redevelopment in Ainslie and I am told that most of the units in the 20 storey Sky Plaza in Woden Town Centre are occupied by over 55's. And if retired people want to be on the ground floor for accessibility reasons then they could be on the bottom storey of a multi unit development. The adjacent (Freycinet) public housing retirement units are three storeys.

The site previously had 240 public housing units. It now has 24 – 10% of the previous, although there will also be 12 units owned by a community housing provider when the

development is finished, making a total of 15%. It is clear that with the current eligibility criteria for public housing that large public housing estates such as Burnie Court tend to create social issues and should not be repeated today or in the future. However, it is important to maintain the same level of public housing in inner-suburban locations close to services and transport. I am concerned that these kinds of redevelopments end up displacing residents on low incomes to outer suburban locations where the cost of living is higher.

Community consultation

There has been a lot of public discussion about this site. It has covered a number of elements: poor solar access; the 10 storey tower; and the strange development style (with the site being developed in two parts by the joint venture plus an early development by ACT housing); and replacing a 3 storey development with a one storey one. Many people have commented on the absurdity of totally redeveloping the site to end up with the same number of units as before.

The development has changed markedly from one in the 2001 Master Plan but the changes do not appear to be in response to the community's concerns. As the Woden Valley Community Council said in its submission, "To find out at this late stage, and only through the release of the Draft Variation, that the proposal has changed from medium density maximum 3 storey (with a 9 storey tower) to high density 6 storeys to be allowed to be developed over the entire site (with set back of 50 m) and a 10 storey tower, flies in the face of all the years of earlier consultation with WVCC. It is a similar example to the disregard given by ACTPLA to the Woden Town Centre Master Plan after at least 3 years intense consultation with the community."

Solar orientation has also been a major element of community concern. The three storey public housing block is north facing but much of the remaining units under construction are not. The planning study and the ACTPLA response states that the "orientation of the buildings across the site has been designed to maximise the solar aspect of all proposed buildings" (P 38). And "The majority of units have a strong northerly orientation at the main frontage, with the remainder predominantly facing east or west". However, the Committee received evidence (P.4 Hansard, Mr D Wrigley on 20-03-09) that in Stage 1 (which does not include the public housing units) only 22% of the housing units have a northerly aspect. In Block E, 10 of the 11 units have no northerly windows.

The discrepancy between the descriptive text and reality was pointed out to the Committee by a couple of witnesses. This misrepresentation of the actual characteristics of the development can only add to the distrust the community feels about this, and other developments. It also makes more work for the community in commenting on planning proposals because to be confident they have understood what is being planned they have to decipher the actual plans rather than rely on ACTPA or the proponent's description.

More broadly, many drawings presented with planning documents are "indicative" or "illustrative" and therefore do not bear much resemblance to the DA when they become available for community consultation. This is inherently misleading and problematic because the Committee observed that the community commented largely on the indicative plans (ie potential DA) not the Territory Plan Variation (TPV) by itself. This is because the TPV is written in technical language, and to understand it requires knowledge of the whole Territory Plan. It would seem that public consultation would be better structured around a Draft Precinct Code that is based on a site-specific urban design. The Draft Precinct Code

could clearly illustrate the maximum permissible 3D building envelope and possibly the proposed design if that is available.

The assembly has no role in development applications and while the community can comment, as long as the DA is consistent with the Territory Plan, ACTPLA must approve it. I support the Committee's Recommendations 1, 8, 9 and 10 all of which are aimed at improving the consultation process. I believe that there is a bigger debate to be had about the development and building design process.

Recommendation A: In descriptions accompanying planning proposals, ACTPLA ensure that the text is consistent with the actual characteristics of the development. Consultation on TPVs should also include an illustration of the maximum permissible 3D building envelope.

Recommendation B: That the Committee and ACTPLA consider ways of improving the consultation process without imposing unnecessary costs and delays on either the community, proponents or Government.

Improving the development

The majority of comments I received about this development are that the current development is a waste of a good site. I totally agree with this. To cover 2/3 of a significant site next to Woden Town Centre which has such great transport, employment and shopping opportunities with single storey units is outright bad planning when you consider Canberra's growth and development as a whole. To do this as well as fail to orientate the units north seems unbelievable given current knowledge of passive solar design and climate change.

However, what makes this one of the most blatant examples of poor design and planning from the ACT Government is that they had a large empty site in a brilliant position which they owned and still partly own. This is not a situation where poor decisions have been made by external developers and the ACT Government has been powerless to intervene.

It demonstrates a lack of commitment by ACT Government to the ACT Greenhouse Strategy and the Canberra Spatial Plan, which is supposed to reinforce residential densities around town centres.

I note that the ACT Government has committed itself to zero net greenhouse gas emissions at some stage in the future. As far as I am aware, no analysis has been done of the greenhouse gas emissions of this site either in development or operation. It is unlikely to be zero.

Greenhouse gas emissions are related to, but different from, energy efficiency ratings. An energy efficiency rating shows how efficient a building is per square metre. However, a smaller but less energy efficient house can lead to fewer greenhouse gas emissions than a bigger but higher rated house. This is why energy ratings for fridges and washing machines include expected total energy used as well as the star rating.

Also from a greenhouse gas point of view, the energy source makes a difference. On site photovoltaics are very different to use of the grid. As well as greenhouse gas benefits, they would also reduce the stress on the grid in summer afternoons as I would expect that the development will require air-conditioning on current plans. Given the expected number of

multi-unit buildings it would be interesting if the proponents explored tri-generation, as this might be cheaper from a dollar and environment point of view. Other technologies such as chilled beams could be explored, which need to be provided for the whole building and so must be done at the development stage.

Recommendation C: Proponents of future large developments should prepare an environmental analysis of different options and submitted as part of any masterplan, draft precinct code or rezoning application. This analysis should be included in public consultation.

It is easy to criticise the current development proposal. Creating Territory Plan rules which would improve the situation on that site or reduce the possibility of similar planning failures in the future is much harder. Part of the reason for this is that the existing development severely limits the possibilities of the site. Another is that many of the key decisions that will determine the sustainability or otherwise of the development will be made at the development application stage.

Multi-storey units

I support the Committee's Recommendation 4 which would re-zone the site to RZ5. I would point out that the 2001 design used the existing planning constraints to achieve a slightly higher number of units with much better solar orientation.

I support Recommendation 3 to allow higher buildings in RZ5, and in particular on this site. As discussed above, it is important that the number of units on this site is at least equal to the previous development. The issue is to ensure that the buildings are as sustainable as possible.

I believe that if anything, multi unit dwellings should require higher initial energy efficiency ratings because, compared with single residences, they are harder to retrofit to improve them. Other developers in Canberra are building multi storey blocks of units where many units are 6 star energy rated. However, in this development, the units which face Melrose Drive will probably have to have fixed windows to reduce noise and are thus likely to have to rely on air conditioning in the summer. Many units will be east or west facing, which increases the chance of over heating during the summer. This makes energy efficiency even more important. COAG and the ACT Labor-Green Parliamentary Agreement have commitments to 6 * for new residential buildings.

The RZ5 variation will apply to all future RZ5 units so it is important to improve building efficiency.

Recommendation D: That the minimum energy efficiency rating for RZ5 should be raised to 5 * minimum with an average of 6*. If the BCA is later changed to give a higher minimum for single residences, then this should also apply to RZ5. This should also apply to the other multi-unit codes for RZ2, RZ3 and RZ4.

In addition to energy ratings, the Green Building Council has recently released a multi-unit rating tool. The Government in its developments should voluntarily adopt the minimum 4 Greenstar rating which would guarantee a much higher standard.

Recommendation E: Government multi unit developments should aim for the minimum 4 Greenstar rating.

It can be difficult to give adequate solar access to all units in a dense multi unit development. In saying this I note that the existing requirements for 3 hours of sun can be fulfilled by an East or West facing unit – in fact anything that does not face solely south. This is probably particularly important for the retirement units which are likely to be occupied during the day but they have already been built. However, we can still improve the yet to be built multi units by ensuring that those units which do not face North are at least energy efficient. I support the Committee's Recommendation 7.

One of the distressing features of this development has been that the number of units on a prime site was not increased. It is expected that with the proposed 10 and 6 storey buildings it will still only have as many units as the previous 3 storey development due to the large amount of space occupied by single storey units. In this context I support the Committee's Recommendation 5.

Recommendation F: That future leases for all but single residential sites (except RZ1 or single) contain a requirement for a minimum yield.

10 storey tower

This was not supported by many people in the community consultation undertaken by the proponents and ACTPLA. This feeling continued in the evidence given to the Committee.

I understand that the main reasons for the ten storey element are:

- To allow the site to reach the same density as before, given the large amount of single storey development. I support retaining the density but the need for the 10 storey element has been created by the proponents. They have not specified how many extra units will be in the 10 storey building compared to 6 storeys, or what the options are for increasing the units in other ways. The ten storey tower is being used as a 'get out of jail card' to cover up the other problems of the development.
- To be a 'gateway' into Woden Town Centre and provide 'a stronger visual impact'. It is opposite the Tradesmen Club's proposed 20 tower development. This does not seem a good reason as a gateway would be before you get to a place. Aside from this, Melrose Drive doesn't really need a 'gateway'.
- To reduce site coverage. Quoting from the submission of the Planning Institute of Australia, "In the Response to issue 2.2.17 "Objection to height" is the unattributed assertion: "allowing an increase in building height on part of the site provides the opportunity to significantly reduce the building site coverage (by approximately 25 per cent) when compared to how the site could be developed under the existing Territory Plan policies and the 2001 Master Plan, where the coverage was 40 per cent. This efficiency translates directly into opportunities for creating a high quality urban design outcome." This assertion is again taken directly from the consultant's report (first dot point page 2) supporting the development proposal. ACTPLA has however added the words "on part of the site" and appear to be trying to suggest that ten storey building by itself reduces the overall site coverage by 25 per cent, which is of course nonsense."

The ten storey tower is planned for the north east corner of the site. It will significantly overshadow buildings Q and M and the open space around them. As many people stated, a high-rise building on the northern end of the site maximises the overshadowing over the rest of the site. The most positive comment is that it will not overshadow other blocks, only Melrose Drive. In this context I support the Committee's Recommendation 2.

There is considerable professional debate about what height is best for sustainable development. Clearly taller buildings have the possibility to reduce the amount of land used. This possibility may of course not be realised as more space may be used for lifts and lobbies, other shared facilities or bigger units. It would seem that it is easier for a medium height rather than higher buildings to capture sufficient renewable energy to be self sufficient. However, the northern façade could be covered with photovoltaics to generate electricity. Many commentators have pointed out that traditional multi-storey buildings in European cities tend to be 4 or 5 stories high. Given the amount of dwelling space is equal; the amount of overshadowing would seem to be a function of the overall site design not just height of the buildings.

In this particular site the plan is to put the bulk of the residential units facing a 6 lane intersection. This is poor planning practice because of traffic noise and fumes and its impacts on human health.

I think there is not an overwhelming case for a 10 storey tower, particularly in the proposed location. It has been strongly opposed by the community and therefore I do not support the Committee's Recommendation 6.

Recommendation G: Redevelop the proposed site and building layout to improve solar access and thus sustainability. This could use the plans drawn up by Mr Wrigley as the basis or possibly a design competition.

Single Storey Elements

As discussed earlier, covering 2/3 of the site with single storey dwellings is incomprehensible given its location. It is so incomprehensible that a number of people have suggested to me that they will be demolished in a few years and rebuilt at a higher density. This is possibly the reason for changing the height limit for the whole site, including parts which are currently under construction or built. I assume that the sale of the units to individuals could make this redevelopment difficult.

Recommendation H: That the joint ventures analyse the feasibility of altering some or all of the single storey units to two (or more) storeys to increase the density. This should be done immediately before all the units are sold to minimise cost and legal issues.

Recommendation I: That ACTPLA, LDA and ACT Housing improve practices to increase densities around town centres in accordance with the Spatial Plan. Increased densities should be done as part of a robust, high quality urban design process that is subject to public consultation and debate and results in site specific building envelope controls being incorporated into a territory plan precinct code.



22 July 2009