

Standing Committee on Planning, Environment and
Territory and Municipal Services

Draft Variation to the Territory Plan No 343
Residential blocks surrendered under the loose fill asbestos insulation
eradication scheme

Dear Sir/Madam,

The Mr Fluffy Homes – Full Disclosure Group (of over 450 members) submit the following concerns to the Committee for consideration. Our group strongly opposes the proposed variations to the Territory Plan for RZ1 Fluffy blocks.

Comments on the EPD Report on Consultation

We are disappointed that the Environment and Planning Directorate (EPD) has recommended that DV343 be approved, particularly as the large majority of the submissions (more than 100 out of 124) did not support the variation. In many cases, the EPD's responses to residents' concerns did not adequately address the issues raised.

General comments

1. Only 12 submissions supported DV343 and the majority of these were from the building industry. These industry submissions are influenced by business profits rather than concerns for the preservation and amenity of Canberra's established neighborhoods or compliance with the Territory Plan. Submissions from people who will be directly affected by DV343 rejected the proposed changes.

Furthermore, the submissions by the Mr Fluffy Homes – Full Disclosure Group, the Fluffy Owners and Resident's Action Group and the various Community Councils represent the views of a large group of residents - therefore the level of community objection to DV343 greatly exceeds the number of written submissions received by the EPD and the Committee should take this into account.

Recommendation to the Committee: Submissions from people who have lived in affected suburbs (and who will be directly affected by the draft variation) should be given greater weight than industry submissions that are likely to be influenced by profits. The Committee should make its deliberations on the basis that a larger number of residents oppose DV343 than the number of objections submitted to the EPD.

2. The EPD's report repeatedly responds to submission concerns by arguing that dual occupancy is already allowed on RZ1 blocks of greater than 800m². The EPD seems to be suggesting that the proposed variation would not result in any differences in the replacement dwelling types built on these blocks compared to the original (Fluffy affected) dwelling types. The EPD's argument is used to respond to concerns about:
 - a) The Government's financial motives (2.2.4.1)
 - b) Planning Merits (2.2.4.2)
 - c) Urban intensification and infill (2.2.5)
 - d) Consistency in RZ1 – suburban zone planning provisions (2.2.7)
 - e) RZ1 Suburban Zone Objectives (2.2.8)
 - f) Land values of surrounding blocks (2.2.10)

- g) Block size for dual occupancy (2.2.12)
- h) Traffic, parking and access (2.2.20.1)
- i) Noise (2.2.20.2)
- j) Site specific considerations (2.2.21.1)
- k) Infrastructure and Utilities (2.2.22.1)

This argument is completely ridiculous but it has been used extensively to justify the proposed changes. The argument is absurd because it is clearly far more attractive to build two dwellings on a block that has unit titling than a standard RZ1 block because the dwellings can be sold separately. We urge the Committee to extensively test the EPD's argument, for example:

- The Committee could request data from the EPD on the number and proportion of dual occupancies that have been built on eligible RZ1 blocks (which cannot be unit titled) against those built on eligible RZ2 blocks (which can be unit-titled). If the number and proportion of dual occupancies in RZ2 zones are greater than RZ1 zones, then it can be concluded that blocks with unit titling provisions will result in more dual occupancy developments.

In addition, the cut and paste of this argument to respond to multiple concerns indicates that inadequate consideration has been given to each of the specific issues raised.

Recommendation to the Committee: The Committee should examine the validity of the EPD's argument as a response to the above community concerns by seeking the relevant data from the EPD (as outlined above).

3. Submissions raised concerns that applying the additional provisions to RZ1 Fluffy blocks would set a precedence for these types of provisions to be applied to other RZ1 blocks (2.2.2). The EPD's response states that extending the provisions to all RZ1 zones would be more appropriately undertaken as part of a strategic review of housing. We support such a strategic review and strongly recommend that DV343 should not be approved separately. A strategic review could ensure consistency within suburban zones and avoid the piecemeal approach that is currently being undertaken with DV343.

Recommendation to the Committee: DV343 should be abandoned. Any changes to the planning provisions for RZ1 zones should be undertaken as part of a Strategic Review of Housing to ensure there are not different planning permissions within suburban zones.

4. The EPD considers that DV343 is appropriate to allow the Government to recoup some of the costs associated with the Asbestos Eradication Scheme (2.2.4.1). The EPD does not state whether other revenue raising planning changes were considered and if so, why they were rejected. There is a potential to implement other planning changes that would raise revenue but would not result in a piecemeal approach to the Territory Plan.

Recommendation to the Committee: The Committee should consider whether other planning changes could allow the Government to raise revenue to offset the costs of the Asbestos Eradication Scheme without resulting in different planning permissions within suburban zones.

5. DV343 has been developed in a rushed manner and the consequences of the changes have clearly not been thought through. For example, the EPD notes that "not all blocks will be feasible for dual occupancy development when considered against the Territory Plan" (p.16). It considers that the impact of dual occupancies and site specific considerations

(2.2.20 and 2.2.21) would be assessed as part of the development application. This creates a potential situation where the purchaser of an ex-Fluffy block pays a higher price for the unit titling provisions, only to discover that when they submit plans for dual occupancy, their request is refused because the block is not appropriate for this type of development. This is a shortsighted approach. Blocks that are not appropriate for subdivision should not have the unit titling provisions added.

Furthermore, the EPD does not adequately address the concern of an ongoing stigma for ex-Fluffy blocks. It explains that the blocks will be removed from the Asbestos affected register once the houses are demolished (2.2.22.3) however does not address that these blocks will be forever identifiable as ex-Fluffy blocks because they will have unit titling provisions attached to them whilst the surrounding blocks will not.

Recommendation to the Committee: The Committee should ensure that these issues are resolved before a final decision is taken on DV343.

Specific comments

We further consider that the EPD's responses do not adequately address the following concerns raised in the submissions:

- a) The EPD considers that it has undertaken adequate community consultation on DV343 (2.2.3.1). We acknowledge that it has made a number of presentations to community groups, however the neighbours of Fluffy blocks may not have been aware of their proximity to Fluffy blocks because the list of Fluffy properties was not released until the consultation period for DV343 had closed. These owners therefore would not have received the information on the planning changes nor realised the potential impact of the changes on them. An increased number of objections to DV343 may have been submitted if these neighbours were aware of Fluffy properties in their street.
- b) The Committee should investigate whether there is a basis for legal challenges to DV343 (2.2.3.2).
- c) The response to 2.2.4.1 on financial considerations argues that unit titling of RZ1 Fluffy blocks supports a range of low density housing choices in RZ1 areas. If this argument is valid, then why are the provisions not being extended to all RZ1 blocks? The EPD fails to explain why it is appropriate for these changes to be made to RZ1 Fluffy blocks but not other RZ1 blocks.
- d) The response to Planning Merits (2.2.4.2) does not explain why it is appropriate to change the planning permission of some blocks based on the roof insulation in these premises. In all other zones, planning permissions are based on amenity factors such as proximity to town centres, public transport etc. The application of the design criterion does little to allay concerns when the criterion has not been adequately outlined in DV343.
- e) Submissions suggested that urban intensification and infill should be focused on town and local centres (2.2.5) The EPD does not appropriately address these concerns or explain why it is appropriate to encourage infill in random areas of suburbs without consideration given to public transport, traffic, school locations, access to amenities etc.
- f) The EPD argues that there will be urban renewal on Fluffy blocks regardless of whether DV343 proceeds (2.2.9). This is correct, new dwellings will be built on these blocks - however the *type* of new dwellings built will differ markedly depending on the outcome of DV343. If DV343 is approved, dual occupancy dwellings are **more likely** to be built on these blocks. The resulting subdivision will result in smaller blocks in affected suburbs. If DV343 is

not approved, it is more likely that single houses will be built and blocks will retain their existing size. These two outcomes will result in a very different street character, particularly for streets with multiple Fluffy blocks.

- g) The EPD suggests that land values of neighbouring blocks will not be greatly affected by the DV343 provisions because dual occupancies are already allowed in these areas. However, the DV343 provisions would result in a greater likelihood that dual occupancies will be built, therefore the EPD's response fails to adequately address the concern.
- h) The EPD's argument that there is no evidence to suggest that a dual occupancy development would be more noisy than a single residential development (2.2.20.2) is illogical. Dual occupancy developments are more likely to use the full plot ratio allowable and therefore these dwellings are likely to be built closer to neighbouring houses than existing dwellings. This, combined with two households on the block (rather than one) and an increase in vehicles, would result in increased noise pollution for existing neighbours.

Concerns with the draft variation

The Mr Fluffy Homes – Full Disclosure group submission to DV343 raised a number of concerns. These concerns have been updated and are provided below for the Committee's consideration.

Breaches to the ACT Territory Statement of Strategic Directions

DV343 breaches strategic principal 1.3:

“Economic, social and environmental objectives will be pursued in a balanced and integrated way, having regard to both short-term and long-term factors...”

This short-term revenue raising measure ignores social and environment objectives and does not adequately consider the long term consequences on the amenity and integrity of Canberra's oldest neighbourhoods.

DV343 breaches strategic principal 2.5:

“A wide range of housing types will be permitted in identified residential areas close to commercial centres and some major transport routes to increase choice...Outside of these areas, planning policies will protect the typically low density, garden city character of Canberra's suburban areas”

Changing the zoning rules for blocks without regard to their proximity to commercial centres or major roads is in direct contradiction of the Plan's objective to have lower density as you move away from centres/major roads. It will negatively affect the garden city character of these suburban areas because dual occupancy dwellings will be built closer to existing neighbours and there will be less garden area available in the blocks themselves.

Breaches to the RZ1 Suburban Zone Objectives

DV343 breaches RZ1 Suburban Zone Objective a):

“Provide for the establishment and maintenance of residential areas where the housing is low rise and predominantly single dwelling and low density in character”.

The proposed changes allow for two double storey dwellings where the 50% plot ratio is allowed, this is in clear defiance of the stated objective for low rise, low density dwellings. The dual

occupancy unit titling will also encourage more than one dwelling to be built in these areas, which also compromises the aim to achieve single dwelling residences.

This proposal does not clearly explain how the plot ratio rules are applied. For example Rule 3.3 states that the maximum plot ratio for dual occupancy housing is 35% where at least one dwelling does not directly front a public road from which vehicular access is permitted. For an affected block this could be interpreted as either:

- both unit titles have a maximum 35% plot ratio: or
- the unit title that directly fronts a public road can have a maximum 50% plot ratio and the unit title that does not directly fronts the public road has a maximum 35% plot ratio.

This lack of clarity also means that the public are unable to assess the implications of potential two storey developments on their local amenity: i.e. for the above example, can the front unit title of a neighbouring block have a two storey dwelling or not?

DV343 breaches RZ1 Suburban Zone Objective b):

“Protect the character of established single dwelling housing areas by limiting the extent of change that can occur particularly with regard to the original pattern of subdivision and the density of the dwelling”.

The proposed changes would be a very clear breach of the above objective because the proposed subdivision and increased density to be permitted on these blocks will be a complete change from the original land use pattern.

*‘DV343 proposes to reduce the minimum block size for dual occupancy from 800m² and above to 700m² and above. The ability to unit title the dual occupancy is considered to be an **incentive** for dual occupancy development on the surrendered blocks.’(2.2.7)*

We believe that this **incentive** will be a major driver in the purchasing by developers of Mr Fluffy blocks to build a dual occupancy and apply for unit titling.

DV343 breaches RZ1 Suburban Zone Objective d):

“Ensure development respects valued features of the neighbourhood and landscape character of the area and does not have unreasonable impacts on neighbouring properties”.

The proposed changes would make it likely that dual occupancy dwellings will be built as close to the property boundaries as possible in order to maximise dwelling size. This will mean that neighbours who had previously enjoyed privacy from their direct neighbours will now have neighbours in close proximity leading to increased noise and reduced amenity of their properties. Additionally, valued features of the neighbourhoods and landscape character – large gardens, privacy from neighbours, etc. will be compromised.

DV343 may result in breaches to RZ1 Suburban Zone Objective g):

“Promote good solar access”.

The proposed changes encouraging dual occupancy could limit solar access for houses built on these sites, particularly where dual occupancies are permitted on smaller blocks and there are limited design configurations available.

Inconsistency within planning zones

Allowing greater development on random RZ1 blocks undermines the integrity of the whole planning system. If the ACT Government considers the planning changes to the RZ1 Fluffy blocks to be consistent with the RZ1 Zoning Objectives, then why are neighbouring RZ1 blocks not allowed to access the same planning permissions? If the proposed changes are not consistent with the Zoning Objectives, then the ACT Government should abandon them.

If the standard RZ1 sliding scale plot ratio is considered necessary to protect the RZ1 zone in all other cases, then how is the case of a Mr Fluffy home any different? The ACT Government wants to bypass the rules that would apply to all other developers in the RZ1 zone.

The additional planning permissions allowed for ex-Fluffy RZ1 blocks would increase the value of those blocks, but neighbouring blocks cannot access those same permissions to improve the value of their land. The Government's position is indefensible. Therefore, we believe that approving these changes would set a precedent for other RZ1 owners to seek additional planning permissions for their blocks. There should not be different rules for blocks within the same zone. The existing RZ1 zoning permissions should be preserved.

Devaluation of neighbouring blocks in Mr Fluffy Streets

The proposed changes to the planning permissions for RZ1 Mr Fluffy blocks will encourage higher density dwellings in what are supposed to be quiet residential areas. Many homeowners purchased their properties specifically in an RZ1 zone because they wanted to live in quiet areas with decent sized blocks and limited noise and traffic. The proposed changes would make these areas more like one of the newer suburbs or an RZ2 zone, with medium density dwellings and the associated increases in noise and parking problems. We specifically oppose the ability to unit title these blocks. It will encourage developers to build large dual occupancy dwellings where only a single dwelling should be built. It would also make those streets less desirable places to live and would therefore decrease the value of surrounding blocks. DV343 is unfair to the neighbours of the re-zoned blocks, who purchased their blocks with the reasonable expectation that the area would be predominantly low density single dwellings.

Recommendation

We recommend that the Government abandon the changes proposed in DV343.

Regards

Erin Hunt
On behalf of the Mr Fluffy Homes – Full Disclosure group
13th August 2015

References:

Territory Plan Statement of Strategic Directions <http://www.legislation.act.gov.au/ni/2008-27/copy/74258/pdf/2008-27.pdf>
RZ1 Suburban Zone Objectives <http://www.legislation.act.gov.au/ni/2008-27/current/default.asp#Strategic+Direction>