

LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL TERRITORY

**DRAFT VARIATION TO THE TERRITORY PLAN – FORREST
SECTION 12, BLOCK 1 (CANBERRA BOWLING CLUB)**

**REPORT NO. 9 OF THE STANDING COMMITTEE ON
PLANNING, DEVELOPMENT AND INFRASTRUCTURE**

NOVEMBER 1991

TERMS OF REFERENCE

On 23 September 1991 the Standing Committee on Planning, Development and Infrastructure resolved :

That :

- (1) the Committee formally adopt draft Variations to the Territory Plan as a reference
- (2) the Committee hold an inquiry into the Forrest Section 12, Block 1 (Canberra Bowling Club) draft Variation to the Territory Plan.

COMMITTEE MEMBERSHIP

Mr Trevor Kaine (Chairman)

Mr Norm Jensen (Deputy Chairman)

Mrs Ellnor Grassby

Secretary : Greg McIntosh

Keyboard/Clerical: Ngoc Domine

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1. INTRODUCTION

Background

- 1.1 The Standing Committee on Planning, Development and Infrastructure was formed on 23 May 1989 and its general terms of reference are to inquire and report on matters :
- (a) referred to it by the Assembly
 - (b) considered by the Committee to be of concern to the community; and
 - (c) public works proposals that may be referred to it by the Assembly.
- 1.2 This is the first draft Variation to the Territory Plan that the Committee has inquired into. The Committee was of the view that an inquiry was warranted because of the degree of community concern and debate surrounding the proposed redevelopment of Forrest Section 12, Block 1 (Canberra Bowling Club).

The Scope of the Inquiry

- 1.3 The Committee believed that the primary focus of the inquiry should be on the issue of whether the proper planning procedures, including public consultation, were followed in the lead up to the tabling of the Variation in the Legislative Assembly. The Committee considered that it was appropriate to concentrate on the process by which the Variation was developed and whether in fact all the legal requirements were duly observed. It was not considered appropriate for the Committee to review the Variation decision taken by the Government other than if that decision was arrived at without the proper observance of the legalities involved.

The Inquiry Process

- 1.4 The Committee received from the ACT Planning Authority copies of all submissions that had been forwarded to the Authority as part of normal consultation process that applies to all proposed draft Variations to the Territory Plan. The Committee decided that it was not necessary to call for written submissions on the Forrest Variation as this would have simply been duplicating the work of the Planning Authority.
- 1.5 The Committee also received a copy of the ACT Planning Authority's submission to the ACT Executive on the Forrest draft Variation and, following a review of both the public submissions and the Planning Authority's submission to the Government, the Committee decided that public hearings should be held to clarify some of the main issues involved. The public hearings would also allow some of

the main participants in the debate over the proposed redevelopment to put their views directly to the Committee.

- 1.6 Two public hearings were held and the Committee also visited Forrest Section 12, Block 1 to inspect at first hand the site of the proposed redevelopment.
- 1.7 On 29 October 1991 senior officials from the Department Environment Land and Planning (including the ACT Planning Authority) were questioned on the planning issues involved and the consultation process that was undertaken with the residents of Forrest. On 5 November 1991 a number of residents opposed to the redevelopment as well as officials from the Canberra Bowling Club appeared before the Committee. Representatives from the ACT Heritage Committee and the National Trust (ACT) were also questioned by the Committee. The details of witnesses appearing before the Committee at the two public hearings is at Appendix 1. On 8 November 1991 the Committee inspected the site of the Canberra Bowling Club and surrounds including the parts of Section 12, Block 1 where it is proposed to build the residential townhouses.

Acknowledgement

- 1.8 The Committee appreciates the cooperation and assistance provided to it by members of the public, officials of the Canberra Bowling Club and ACT government officials during the inquiry.

2. VARIATIONS TO THE TERRITORY PLAN – LEGISLATIVE REQUIREMENTS

Introduction

- 2.1 Until the final Territory Plan is approved by the Legislative Assembly land use proposals continue to be determined in accordance with NCDC policies that were still in force when the National Capital Plan came into effect in December 1990. These existing NCDC policies are in effect the current Territory Plan.
- 2.2 On 24 December 1990 the **Australian Capital Territory Interim Planning Act 1990** was enacted. This Act established the ACT Planning Authority and included legislative requirements with respect to preparing, administering and varying the Territory Plan. New planning legislation (the **Land [Planning and Environment] Bill 1991**) which will replace the Interim Planning Act 1990 is currently before the Legislative Assembly and if passed will come into effect on July 1 1992. Until that time Variations to the Territory Plan must conform with the provisions of the **Interim Territory Planning Act 1990**.

The Interim Territory Planning Act 1990 and draft Variations to the Territory Plan

- 2.3 The key provisions of the Act in terms of Variations to the Territory Plan are as follows :
 - (1) in preparing a draft Variation the Planning Authority must consider any recommendation by the Conservator of Wildlife
 - (2) before submitting a draft Variation to the Executive the Authority must advertise in the Gazette and in a daily newspaper stating that copies of the draft Variation are available for public inspection for at least 21 days. Further, the advertisements must invite interested persons to submit written comments to the Authority within a period of not less than 21 days
 - (3) before submitting a draft Variation to the Executive the Authority must consult with the National Capital Planning Authority
 - (4) before submitting a draft Variation to the Executive the Authority must advertise in a daily newspaper that comments received from the public and the National Capital Planning Authority are available for public inspection for at least 21 days
 - (5) following the expiration of the period set out in (4) above the Authority may amend the draft Variation in light of the comments received, correct any errors or make changes of a technical nature. The Authority may also defer or withdraw a draft Variation
 - (6) when the draft Variation is submitted to the Executive for approval the Authority must provide all background papers, a summary of each written

comment received and a report about its consultation with the National Capital Planning Authority

- (7) once received the Executive may require further consultations, defer or withdraw a draft Variation or require revision of the draft Variation
- (8) once approved by the Executive the draft Variation must be laid before the Legislative Assembly within six sitting days and, once tabled, the Assembly has six clear sitting days within which to reject the Variation in whole or in part. If, at the expiration of the six clear sitting days, no resolution has been passed to disallow the Variation it automatically comes into effect.

3. THE PLANNING PROCESS AND FORREST SECTION 12, BLOCK 1

Background

- 3.1 The Background Paper – "Forrest Section 12, Block 1 (Canberra Bowling Club) : Draft Variation for Public Comment" – issued by the ACT Planning Authority in May 1991 states that...

"The Canberra Bowling Club was established in 1927, and was the first bowling club to be established in the Australian Capital Territory. It was prominent in the early stages of Canberra's development, providing both a social and sporting venue. It is located on Block 12 Section 1 Forrest at the corners of National Circuit, Hobart Avenue and Dominion Circuit – [see Diagram 1 showing existing land use plan from page 7 of the Background Paper].

"The Club site has an area of 11 558m², and comprises three outdoor bowling greens, of which only two are currently used, and a weatherboard clubhouse which was built in the 1930s. In recent years there has been a marked deterioration in facilities caused by escalating maintenance costs.

"It is proposed to vary the Territory Plan to allow the Club to redevelop the site to provide modern, upgraded facilities. The Club proposes a two level development with a clubhouse , an indoor and outdoor bowling green sunk into the site to present a single storey facade to the street. Sited around the Club 26 two storey townhouses are proposed and basement car parking for 140 vehicles serving the total development."¹

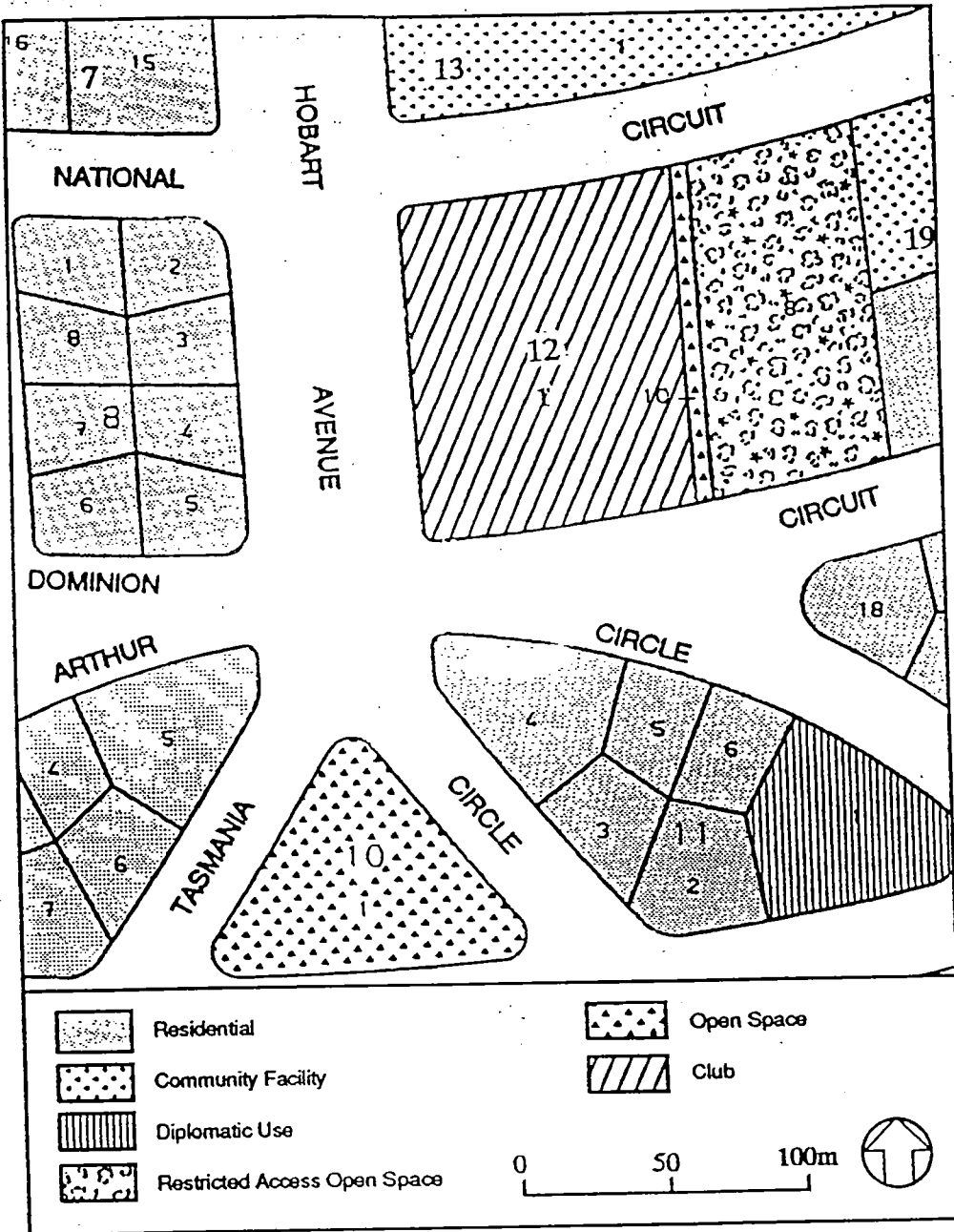
- 3.2 The Canberra Bowling Club applied to the ACT Planning Authority in December 1990 for permission to redevelop the site and on May 4 1991 the Authority released a draft Variation to the Territory Plan for the site, inviting public comment by 27 May 1991. ². The draft Variation proposed to change the Land Use Policy for the site from Restricted Access Open Space to Residential and Lawn Bowling Club – see Diagram 2 showing the Implementation Principles (page 10 Background Paper).

¹ Page 5

². Submission from the ACT Planning Authority to the ACT Executive on Variation to the Territory Plan for Forrest Section 12, Block 1 – 13 Sept 1991 – page 1.

DIAGRAM 1

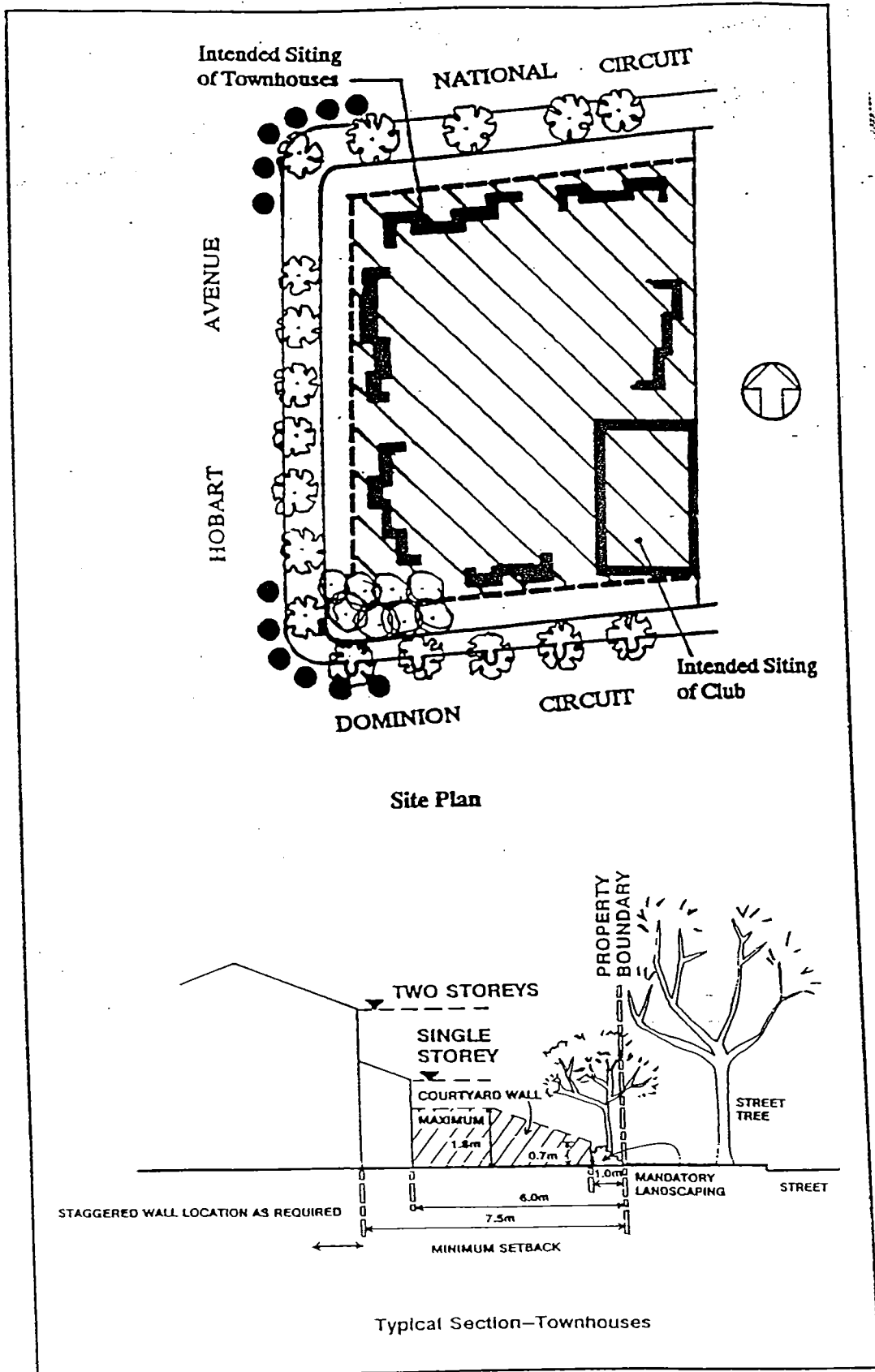
EXISTING LAND USE PLAN



The Existing Land Use Plan depicts Land Use contained in—

- generalised existing land use categories;
- the City Plan of Canberra in relation to roads and trunk cycle routes;
- formal commitments with respect to public lands, services and structures.

IMPLEMENTATION PRINCIPLES



The Implementation Principles are included to assist an understanding of the implications of the Draft Variation to the Territory Plan.

The Consultation Process

- 3.3 According to figures provided to the Planning Committee by the ACT Chief Planner, a total of 104 written submissions were received by the Authority – 78 of whom opposed the redevelopment outright and 18 of whom were opposed to aspects of the proposed redevelopment. Only 8 submissions favoured the proposal as outlined.
- 3.4 The Planning Authority held three meetings with residents on the draft Variation.
- 3.5 The draft Variation was considered and supported by the ACT Administration Coordination Committee on 21 August 1991.³

Main Concerns

- 3.6 According to the Planning Authority the main concerns expressed by the residents and others during the consultation phase were as follows :
- (1) the heritage significance of the existing Clubhouse and the surrounding environment
 - (2) the proposed location of the new clubhouse on Dominion Circuit
 - (3) hazards associated with access to the new Clubhouse off Dominion Circuit and also the noise problem for houses adjacent to the new Clubhouse
 - (4) the possible loss of mature oak trees along the eastern boundary of the site
 - (5) the loss of a community/recreational facility and the argument that any excess land not required for the new facilities should be offered to other sporting and community groups
 - (6) the overall design and density of the proposed redevelopment was excessive and out of character with the surrounding area.⁴
- 3.7 As a result of the expressions of concern the Planning Authority revised the exhibited draft Variation with the following amendments to the draft Implementation Principles :
- . the proposed new Clubhouse was relocated from frontage onto Dominion Circuit to frontage onto National Circuit. As well, access to the Club was changed from Dominion Circuit to Hobart Avenue
 - . access to the proposed townhouses was changed to be from off Hobart Avenue as opposed to access off National Circuit as originally proposed

³ Submission from the ACT Planning Authority to the ACT Executive, op cit, page 1.

the oak trees along the eastern boundary of the site are to be retained and all fixed mechanical plant and service areas are to be screened from public view and are to be located and designed in such a way as to minimise noise.⁵

- 3.8 The Committee was also informed that there was originally proposed to be 32 townhouses on the redeveloped site but that this number was reduced to 26 as a result of discussions with the ACT Planning Authority.⁶
- 3.9 Diagram 3 shows the revised Implementation Principles as issued by the Planning Authority (page 9 ACT Planning Authority Submission to the ACT Executive).
- 3.10 The Planning Authority, in its submission to the Government on 13 September 1991, stated that..."On balance the ACT Planning Authority has determined that the redevelopment of the site is in the wider interest of the community."⁷

The Government Response

- 3.11 On 30 September 1991, under Section 19 of the Interim Planning Act 1990, the Chief Minister and the Minister for Environment, Land and Planning, formally signed approval of the Variation for the Territory Plan for Forrest Section 12, Block 1.
- 3.12 On 22 October 1991 the Minister for Environment, Land and Planning tabled the Variation in the Legislative Assembly.

Compliance with Legislative Requirements

- 3.13 The Committee believes that in the case of the Variation for Forrest Section 12, Block 1, the ACT Planning Authority and the Government have fully complied with the legislative requirements as set out in the **Interim Territory Planning Act 1990**.

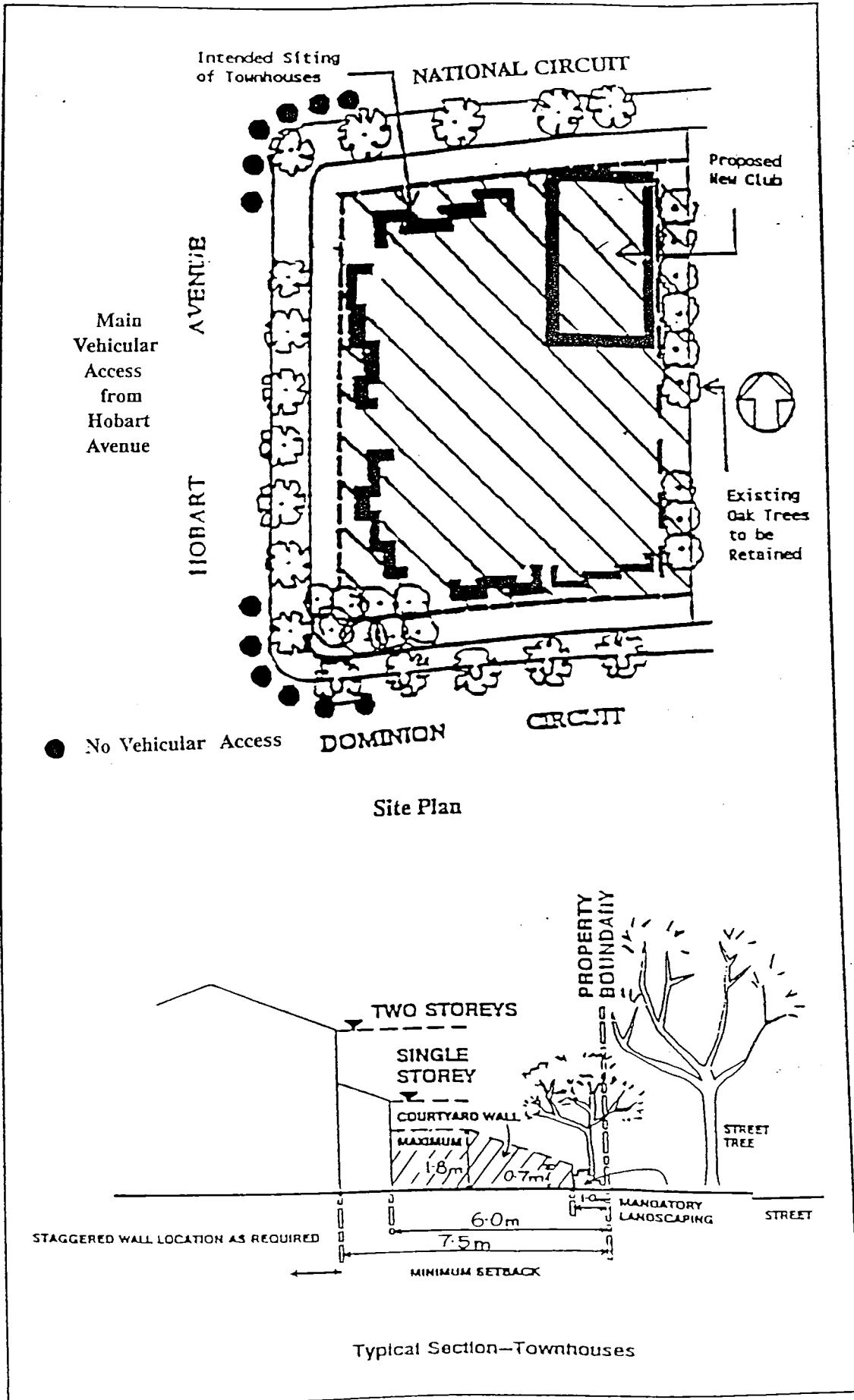
⁴ ibid, pages 1, 2.

⁵ ibid, pages 2, 3.

⁶ Transcript, page 63.

⁷ Submission from ACT Planning Authority to ACT Executive, op cit, page 4.

IMPLEMENTATION PRINCIPLES



The Implementation Principles are included to assist an understanding of the implications of the Variation to the Territory Plan.

4. THE COMMITTEE'S INQUIRY

SOME ISSUES RAISED AT THE PUBLIC HEARINGS

Consultation

4.1 One of the key concerns expressed by residents both in their submissions to the Planning Authority and in evidence given to the Committee was the lack of consultation undertaken by the Authority with the residents of Forrest. It is clear that the Authority complied with the requirements of the Act by calling for written submissions and providing the ACT Executive with a summary of all public comments.

4.2 However, one resident summed up the consultation process thus...

"The Planning Authority made much of the three meetings which took place between the Authority and some of the residents earlier this year. The Authority has portrayed those meetings as consultation with the residents of Forrest but that is not the case. These meetings took place when four residents asked to see the Planning Authority to get more information about the development, because very little was available. The first meeting was nothing more than an information gathering exercise. The second meeting – at that meeting the Planning Authority had read the 104 submissions and volunteered the change of the clubhouse from one side of the site to the other and the related access, and also to keep the trees along the eastern boundary.

The third meeting, the leasing officials were present and there was some discussion about the needs of the tennis club and it was at that meeting that the Planning Authority said they could not consider those needs because they could only deal with the lessee of the block in question. Thereafter, the residents put together some alternative proposals but when they approached the Planning Authority they were told it is too late, they were about to make their recommendation to the ACT Executive.

These meetings have been characterised by the Authority and by others as a proper consultation process with the residents of Forrest and I am here to say that is not the case."⁸

4.3 The Forrest Tennis Club also expressed concern about the lack of consultation undertaken with respect to the redevelopment proposal. One Club representative

⁸ Transcript, page 82.

maintained that there were procedural defects in the consultation process and that, as the only neighbour of the Bowling Club,..."the Forrest Tennis Club was not consulted by the [ACT Planning] authority, in breach of long standing procedures."⁹

Heritage

- 4.4 The heritage value of the existing Clubhouse and its surrounds was also a key issue raised by residents and other interested parties. The Chairman of the ACT Heritage Committee argued that...

"the Bowling Club is significant as the first bowling club in Canberra for its association with early sporting and recreational life in Canberra. It provides an important representative example of an early 20th century bowling club, which has a close relationship in architectural styling and landscape with the surrounding residential areas."¹⁰

Scale of Redevelopment

- 4.5 A degree of concern was expressed about the size of the proposed redevelopment and in particular the fact that 26 townhouses appeared to be an excessive number given the size of the site...

"the Planning Authority has said that the townhouses comply with the existing townhouse guidelines as to plot ratio...We say that is not a proper answer...The fact is that there is going to be a block of 26 townhouses in one area and that will be extremely dense."¹¹

Other Issues

- 4.6 A number of other concerns about the proposed redevelopment were expressed to the Committee including the viability of the Bowling Club; the Club's alleged failure to comply with the terms of the lease; the inadequacy of the existing stormwater drainage system; the supposition that the Bowling Club stood to make a large amount of money from the redevelopment and that this was inappropriate considering that it had a concessional lease and environmental concerns such as a potential noise problem in the area surrounding the Clubhouse.

THE CANBERRA BOWLING CLUB SUBMISSION

- 4.7 In evidence to the Committee the President of the Canberra Bowling Club maintained that the plans for the redevelopment of the site only came to fruition ...

"after lengthy consideration of the position that the Canberra Bowling Club is now in , insofar as the Clubhouse is falling down virtually around our ears; the

⁹ Submission to the Committee from Ian Gillespie-Jones – 13 Nov 1991.

state of our greens are in a parlous state; our membership has declined on an average of 10 per cent for the last five or six years because of the state of the greens...We believe that we have done a lot of research in working out a viable situation that would not only satisfy our needs but the needs of the community around us...architecturally and environmentally we [have] fulfilled our obligations in this matter. We have gone through all the correct procedures with the Government to this stage...This has been a long process going back some 18 months ago..."¹²

4.8 On the question of consultation the President of the Club said that...

"we went out of our way to tell many of the people in the area close by, wrote to them all that we knew of in the immediate vicinity and I rang about 20 of those people personally to tell them this project was on. We were not hiding anything from anybody...We have gone – bent over backwards by preparing 18 drawings to satisfy everybody about this development... We have bent over backwards to acquiesce to everything they have said to us, even with meeting with residents that have come over and expressed their views about the fact there might be noise if we had the Clubhouse sited on Dominion Circuit, so we have shifted it back to National Circuit to placate their fears. The school [Forrest Primary] has no worries...We believe we have complied with everything and every wish that everyone has asked us to do."¹³

4.9 A further benefit of the revelopment was outlined by the President of the ACT Bowling Association. He argued that not only would the new indoor bowling facility provide better all weather playing conditions it would also enable the ACT Association to host national events such as the National Indoor Bowling Championships. The hosting of such events would bring in significant amounts of revenue to the Canberra hospitality and accommodation industries.¹⁴

4.10 The Canberra Bowling Club officials strongly put the view that the exorbitant cost of restoring and maintaining the existing Clubhouse precluded it from being a part of the redevelopment. This view was confirmed in an Inspection Report commissioned by the Bowling Club. The Report stated that...

"General overall condition of Club premises is poor. The building has suffered dry rot, termite attack and footing pad settlement to piers supporting

¹⁰ Transcript page 100.

¹¹ Transcript, pages 81/82.

¹² Transcript, pages 60/61.

¹³ Transcript, pages 60, 75, 76.

the timber floors, together with moderate deflection of beams supporting part of the roof structure in the main Club area...The building is also considered to be out of plumb. The original building is approximately sixty-five (65) years old and for a timber framed structure it is considered to have passed its life expectancy which we consider to be in the order of fifty (50) years." ¹⁵

4.11 It was also argued that it would be very difficult to ascertain just what parts of the building were "original" and what parts were added on – some of the "add ons" being attached as late as the 1960s. No evidence was offered as to the possible cost of any attempt to restore the original historic part of the building.

4.12 When questioned on why there was a need for 26 townhouses to be included as part of the redevelopment the Committee was informed that this was the "minimum number" needed to make the project viable.¹⁶

SITE INSPECTION

4.13 On Friday 8 November 1991 the Committee visited the site of the proposed redevelopment and inspected at first hand the existing Clubhouse and its surrounds. The Committee was shown over the entire site including the areas designated for the new Clubhouse, the bowling greens and the townhouses. The Committee was able to examine at first hand the contention that the existing Clubhouse was in very poor condition including evidence of dry rot and past termite activity.

¹⁴ Transcript, page 62.

¹⁵ Inspection Report on Canberra Bowling Club – ACT Building Consultants and Managers, 8 Nov 1991, page 5.

¹⁶ Transcript, page 64.

5. CONCLUSIONS

- 5.1 After having given all the interested parties an additional opportunity to present their arguments, and having given the arguments careful consideration, the Committee makes the following conclusions with respect to the Variation to the Territory Plan for Forrest Section 12, Block 1 :
- (a) The ACT Planning Authority and the Government complied with the legislative requirements as set out in the **Interim Territory Planning Act 1990**. The Planning Authority followed the normal procedure it adopts for all draft Variations to the Territory Plan.
 - (b) Unfortunately, despite the desirability of retaining it because of its historic significance, the cost and difficulties associated with attempting to preserve the old Canberra Bowling Club Clubhouse appear to be too great to warrant its retention. The evidence given to the Committee suggests that it would be a very difficult task to remove the "newer" parts of the Clubhouse which do not have heritage significance and retain the original core. The Committee's inspection of the site led to the Committee itself concluding that it would be difficult to do so. The Committee is of the opinion that it is regrettable that, before the decision was made to accept the proposal, no evaluation was carried out of the feasibility of restoring the historic core of the building and the costs of doing so.
 - (c) It is impossible, and indeed inappropriate, for the Committee to attempt to assess the economic viability of the redevelopment proposal that is being put forward by the Canberra Bowling Club. The Committee, as a general principle, accepts the redevelopment of the site along the lines proposed but the final shape and form that the redevelopment takes is properly a matter for the Bowling Club, the ACT Planning Authority and the Government to determine.
 - (d) Adequate safeguards exist within the planning process to ensure that the redevelopment of the site is implemented according to set standards. As with all other building developments in the ACT, any redevelopment of the site must conform strictly to Design and Siting regulations as well as other relevant statutes and guideline

5.2 Notwithstanding the conclusion in 5.1 (d), this case demonstrates most forcefully the need to hasten the introduction of the new planning legislation because of the public perception that current processes are inadequate for today's community expectations about standards of performance. Lengthy delay in introducing the new legislation is unacceptable.

Trevor Kaine
Chairman
13 November 1991

6. APPENDIX

LIST OF WITNESSES

Bannerman, Ron	Committee Member, Canberra Bowling Club
Brine, Judith	Resident of Forrest
Cox, Richard	President ACT Bowling Association
Dengate, Gary	President Canberra Bowling Club
Guild, Peter	First Assistant Secretary, Land Division
Martin, Eric	Chairman ACT Heritage Committee
Martin, Josephine	National Trust Australia (ACT)
Nash, Ian	Resident of Forrest
Pert, Alison	Resident of Forrest
Sharma, Janak	Vice President Canberra Bowling Club
Tomlins, George	ACT Chief Planner
Townsend, Jeff	Secretary, Dept Environment, Land and Planning

7. DISSENTING REPORT/ADDITIONAL COMMENTS – MR JENSEN

INTRODUCTION

7.1 I have found it necessary to make these dissenting comments as I was not able to support two fundamental parts of this report. It was for this reason that I requested that my dissent from the report be formally recorded in the minutes. The two sections of the report I could not agree with were:

Paragraph 1.3 – The Scope of the Inquiry; and

Paragraph 5.1 – Conclusions.

7.2 I have also chosen to make some additional comments on other sections of the report where I considered it necessary to expand on the comments to which the Committee agreed.

DISSENTING COMMENTS

Paragraph 1.3 – Scope of the Inquiry

7.3 My dissent from this particular paragraph is related to the failure of the rest of the Committee members to agree to an inquiry on the merits of this proposal. The Committee must consider more than just whether "due process" had been followed. That is the role of the Courts and it is for Committees like this one, particularly in the absence of appropriate review rights, to examine and comment on the merits of planning proposals when there is sufficient community concern to warrant such an examination. I am of the view that other members of the Committee have abdicated the wide powers given them under the parliamentary process for which they were elected.

7.4 The Committee has a role to question all parties, consider evidence obtained and then make conclusions and recommendations for consideration by the Executive and eventually the Assembly. If the Committee system is to be effective it must be seen to be independent and more than just a rubber stamp to Executive decisions.

Paragraph 5.1 – Conclusions

7.5 These comments are related to the paragraph numbers of the report:

5.1(a) While it is accepted that the Territory Planning Authority (the Authority) followed all statutory requirements for variations to the planning policy for the site, this process is in need of change to

provide a greater role for an Assembly Committee to comment were sufficient community concern has been expressed before the Executive makes its final decision.

5.1(b) The Committee inspected the site and it was clear that the building was in much need of repair and had been altered considerably since the early days of the Bowling Club. However, it was not possible to make an informed judgement due to of the lack of any assessment of the costs and feasibility of retaining and refurbishing the building as a heritage asset for the community. This was a major failure on the part of the Authority which, despite a strong recommendation from the Heritage Committee, did not recommend to the Executive that such an assessment should be prepared pending a final decision being made. It is indeed unfortunate that despite the lack of such a recommendation from the Authority, the Executive did not obtain such an assessment before making its decision. The strong views of the Heritage Committee warranted a detailed assessment of their recommendations and the possible costs to the community.

5.1(c) If the planning process had been completed before a development proposal had been prepared, commercial viability of the proposal would not have been an issue with the Committee. The Committee would have only had to consider the recommendations of the Authority from a planning point of view. It may well have been that if such an assessment had been made recommendations could have included a possible merger between the Bowling and Tennis Clubs, with some limited housing developments, to maintain a sporting facility for the suburb.

5.1(d) While it is accepted that safeguards may exist for the development of the site, the current process does not allow those closely affected by the plans to comment on the final development. In cases like this where a certain scale of suburban development has been in place for a number of years, such major changes to scale and density of residential area should be completed in full consultation with the near neighbours.

ADDITIONAL COMMENTS

Role of the Committee

7.6 This is the first time that the Committee has chosen to consider a draft plan variation; I trust it will not be the last. I will certainly be seeking to have other contentious proposed variations considered by the Committee before the end of this Assembly. There are a number of Draft Planning Variations where comments already received by the Committee would suggest the

need for an inquiry, depending on the comments made by the Authority and the decision of the Executive.

- 7.7 It is my firmly held belief that the Committee has a major role to play in the development of an open and consultative planning system for the ACT. This is even more critical in the period before the commencement of a more accessible planning appeals process than currently exists. It is for this reason that I was pleased to support this inquiry.
- 7.8 It has been my view, since being appointed to the Committee that when ever a proposed change to the planning policy for an area or part of a suburb, the Committee should examine the comments by the community and present comments and/or recommendations to the Executive before the Executive makes a final decision. To enable the Committee to comment, it is necessary for the Committee to be able to examine the responses by the Authority the issues raised by the community.
- 7.9 The current process does not allow this to happen and the Committee must wait until after the Executive has made a decision before it has access to such advice, unless it makes a decision to commence an inquiry before the Executive has made its decision and tabled the variation in the Assembly. This procedure is seen as a waste of time and resources for the Authority, the Executive and the Committee. In this case however, the Executive chose to make its final decision before the Committee had completed its inquiry. It was for this reason that I moved for the disallowance on the Plan Variation on 22 October, 1991.

The Planning Process

- 7.10 The proposal to vary the policy plan for this area of Griffith is a prime example of a development driven planning system. In this instance the planning principles in the draft variation have been prepared to meet a development proposal put forward by the Canberra Bowling Club because they were not in a position to operate on the site.
- 7.11 Proper planning principles would suggest that the Club should have advised the Department of Environment Land and Planning that it was not in a position to operate as a Bowling Club. As the holder of a City Area Leases Act lease the Bowling Club requested advice as to what sort of changes should be acceptable from a planning and heritage point of view. Once this issue had been resolved the Club could then go ahead with its plan to seek a change of lease purpose and re-development in accordance with a change in land use. It may well have been possible that after the preparation of a draft variation to the land use policy for the area, and consultation with the community, the current proposal may have been approved.
- 7.12 If it was considered that the approved plan variation did not allow the Club to meet its financial needs, arrangements should then have been made for the

Club to surrender the lease, obtain appropriate compensation in accordance with the terms of the lease and seek another option to continue their operations. These procedures are particularly important in instances where the land has been provided on a concessional rental basis for use by a community organisation or club which is operating for the sole benefit of its members. This is the fundamental difference between the leasehold system of land tenure which applies in the ACT, and freehold.

7.13 It is my view, supported by others¹, that the planning process in this case is out of phase and back to front. A more enlightened view of the planning issues at stake, may have resulted in the Bowling Club and the Tennis Club entering into a joint venture to provide sporting facilities which could have retained much of the heritage aspects of the site. This would be a re-development more in keeping with the scale of existing nearby suburban housing and street-scape.

Public Consultation

7.14 In its evidence the Authority referred to the process and extent of public consultation.² It was clear that the Authority believed that it had fulfilled its legal obligations for community consultation.

7.15 However, it was clear from the residents who appeared before the Committee that they did not agree with this view, particularly as all meetings referred to, had been instigated by residents.³ It was made very clear from one who participated in the three meetings with the Authority, that the group was only seeking further information.⁴ When this group attempted to put alternatives to the Authority, the Authority declined to meet with them.⁵

7.16 Despite the large number of submissions opposing the development, it was unfortunate that the Authority chose not to appear at a public meeting to listen to residents. It also seemed that a decision was made to take the soft option by not seeking further discussions with some of those who submitted detailed comments to the proposal. This was most unfortunate, particularly

1. Transcript p.50. Professor Brine is considered to have appropriate experience and qualifications to make such comments. See Transcript p.56.

2. Transcript p.8-10.

3. Transcript p.57; p.82 - 83; p. 87 - 88.

4. Letter from Mr Stephenson to the Chief Planner dated 1 July 1991 provided in response to a question - Transcript p.57.

5. Transcript p.58.

as the residents with which the Authority had had three meetings, clearly indicated that they did not see themselves as representing the community.⁶

- 7.17 Any suggestion that the three residents who appeared before the Committee did not speak for the community during the hearings is unfounded. Since those early meetings at least one large public meeting had been held and it was clearly not possible, nor necessary, for all the 104 people who provided written submissions to appear before the Committee. Further, it was made very clear that time did not permit such an arrangement and residents who appeared were informed that time was limited. It is noted that the Chairman acknowledged this during the public hearings.⁷
- 7.18 It is considered that the consultation process by the Authority was deficient. The process currently applying should allow for more than just noting and commenting on the 104 submissions, of which 96 were opposed to this proposal, in whole or in part.⁸ Three meetings with a small group of residents, who were seeking more information on the proposal, were clearly insufficient. The Authority should have made arrangements to hold discussions with a larger group of residents if they were concerned about the meeting held on 9 October, 1991 to which they declined a residents invitation.⁹
- 7.19 The report has already dealt with the consultation process undertaken by the Bowling Club.¹⁰ However, it is considered that the amount of information provided could have been improved by providing scale models to show how the proposals would affect the area. This is an issue that must be taken up as part of the Territory Plan consultation process.

Lease Arrangements for the Land

- 7.20 During the public hearings a suggestion was also made that the Canberra Bowling Club had failed in its lease obligations and that the Club had therefore contributed to its' own financial problems. These problems resulted in proposals for re-development of the Club.¹¹
- 7.21 An examination of the lease supplied to the Committee and an inspection of the existing Club House could lead one to concur with that suggestion.

6. Letter from Mr Stephenson dated 1 July 1991.

7. Transcript p.104.

8. Paragraph 3.3.

9. Transcript P.11-12.

10. Report paragraph 4.9.

11. Transcript p.89-90.

Considering that the land on which the Club has been established was in effect given to the Club without a premium payment or any major rental payments, this issue takes on a greater significance. It is only the suggestion that a lease purpose change to allow residential developments that increases the value of the property and the ability of the Bowling Club to become what is in effect a developer.

- 7.22 Such leases were not granted for this purpose to sporting clubs and non-profit community organisations. It is accepted that a betterment charge will be levied if the plan is varied, a variation to the lease approved by the surrender of the existing lease and the granting of a new lease. However, the community is not getting full value for the change in value and the loss of a recreation area and open space.

The Proposal

- 7.23 I do not accept that this scale of the development is appropriate for that part of Griffith. If re-development is to go ahead fewer residential properties, in conjunction with changes to the club house, would be in keeping with the existing street-scape and suburban development of the precinct. This could also allow for a possible joint venture with the Forrest Tennis Club to meet the wishes of the community and both Clubs.
- 7.24 I was not satisfied by evidence given to the Committee that other alternatives had been seriously considered by the Bowling Club. Proposals appeared to be totally development driven with a view to obtaining the maximum benefit from the site for the developer. It should also be noted that the only reports on the condition of the building and the degree of past and present pest infestations were apparently commissioned and conducted after representatives of the Club appeared before the Committee on 5 November 1991¹². This was despite the fact that the Committee was given the impression that these assessments may well have already been completed.¹³

Heritage Considerations

- 7.25 I am concerned about the failure to have a proper heritage assessment prepared following the strong recommendations of the Heritage Committee against the re-development of the Club House.

12. Report by A.C.T. Building Consultants and Managers dated 8 November 1991 of an assessment of the building conducted on 7 & 8 November 1991 and a Property Inspection Report and Certificate by Check Pest Control Services dated 8 November 1991.

13. Transcript p.67.

Conclusions

7.26 Role of the Committee.

- a. The Committee has an important role to play in examining and reporting on contentious planning issues that are to be resolved by the political process.
- b. The Committee can provide an appeal forum for the community on planning issues, particularly variations to the Territory Plan, in the absence of an effective planning process, before the matter is finally decided by the Executive and put before the Assembly.
- c. All comments and recommendations by the community, together with recommendations to the Executive by the Authority, are required by the Committee to enable it to consider and report on such proposals.

7.27 **The Planning Process.** The process in this case was being driven by the economic needs of the Canberra Bowling Club, to the detriment of the application of good planning principles for the re-development of residential areas.

7.28 **Public Consultation.** While the public consultation process in this case met the letter of the law, the large number of negative comments voiced by the community indicate the need for the Authority to engage in further discussions with a greater number of those objecting.

7.29 **Leasing Arrangements.** Current leasing arrangements allow for the lessee to seek a lease change for the extent of development proposed. It is considered inappropriate that leases issued to community and sporting groups, for no premium and little or no rental payments, should be used to provide a windfall profit for a group, organisation or a developer.

7.30 The Proposal.

- a. The proposal, on which the draft variation to the Territory Plan was based, is not considered to be appropriate in scale and concept for this part of the suburb of Griffith.
- b. A proposal which retained the sporting nature of the site, may well be accepted by the community. An acceptable proposal may include a joint venture with the Forrest Tennis Club and a small number of residential properties.

7.31 **Heritage.** The proposal to demolish the existing buildings, without a proper and detailed assessment by a suitably qualified heritage architect detailing the ability to restore and retain those historic aspects of the site and building is considered to be a serious omission by the Authority and the Executive.

RECOMMENDATIONS

7.32 The following key recommendations are made for consideration by the Assembly and the Executive:

- a. The Assembly disallow the current policy variation before it, if the Executive does not withdraw the Variation to the Territory Plan for Forrest Section 12 Block 1.
- b. That the Executive
 - (1) revoke its approval of the Variation for Forrest, Section 12, Block 1;
 - (2) direct the Authority to reconsider the overall planning issues related to the site;
 - (3) direct the Authority to conduct further consultation with the community on these planning issues;
 - (4) initiate a study to include a full assessment of the costs and potential for the preservation of the heritage of the site and existing buildings; and
 - (5) ensure that any proposals for the re-development of the site be in accordance with an assessment of the planning and heritage issues related to the site and the buildings, including the potential for an arrangement between the Canberra Bowling and Forrest Tennis Clubs.

N.A. JENSEN, MLA

