



ACT LEGISLATIVE ASSEMBLY

**DRAFT VARIATION NO. 150 TO THE
TERRITORY PLAN-DEAKIN BLOCKS 14
AND 15 SECTION 36 [FORMER DEAKIN
OVAL SPORTS GROUND]
PROPOSED RESIDENTIAL & URBAN OPEN
SPACE LAND USE POLICIES & CHANGES
TO THE PUBLIC LAND OVERLAY**

Report No. 17

Standing Committee on Planning and Environment

**Mrs Vicki Dunne MLA
Chair**

June 2003

Committee membership

Chair	Mrs Vicki Dunne MLA
Deputy Chair	Mr John Hargreaves MLA
Members	Ms Roslyn Dundas MLA
	Mrs Helen Cross MLA

Secretary:	Linda Atkinson
Administration:	Judy Moutia

Resolution of appointment

- (1) The following general purpose standing committee be established and each committee to inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community:
 - (f) A Standing Committee on Planning and Environment to examine matters related to planning and land management, conservation and heritage, transport services and planning, environment and ecological sustainability.
- (2) If the Assembly is not sitting when the Standing Committee on Planning and Environment has completed consideration of a report on draft plan variations referred pursuant to section 25 of the *Land (Planning and Environment) Act 1991* or draft plans of management referred pursuant to section 204 of the *Land (Planning Environment) Act 1991*, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

Minutes of Proceedings, No 2, Tuesday 11 December 2001, pp 11 to 13

Terms of reference

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

25 Consideration by a Legislative Assembly Committee

The Executive shall, within 28 days of receiving a draft plan variation under section 24, refer -

(a) the draft plan variation; and

(b) the documents referred to in subsection 24(1) that relate to the draft plan variation;

to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft plan to the Legislative Assembly.

Preface

The Land (Planning and Environment) Act 1991

1. Sections 25 and 26 of the Land (Planning and Environment) Act 1991 require the Executive to refer draft Variations to the Territory Plan to an appropriate Committee of the Assembly for report, and to then have regard to that Committee's recommendations before approving any Variation. The *Land (Planning and Environment) Act 1991 (the Act)* provides for a Territory Plan (the Plan) to "set out the planning principles and policies"¹ for the ACT. The objective of the plan is to ensure that the planning and development of the Australian Capital Territory provides an "ecologically sustainable, healthy, attractive, safe and efficient environment"² for the people of the Territory.
2. The Plan includes both a Written Statement, setting out general planning principles and more specific land use policies, and a map. *The Act* places conditions on development or land use within designated areas to meet the principles prescribed for that land on the Plan.
3. Land use requirements change over time and *the Act* sets in place a regime by which the stipulated land use can be altered or varied. Proposals to vary the Plan are prepared by the Territory planning authorities and are known as draft variations. Draft variations are required to be the subject of community consultation. There can be a number of versions of a draft variation depending on the consultation program.
4. After public consultation a draft variation, incorporating any amendments made as a result of public comment, and associated papers, is referred by the ACT Government to the appropriate committee of the Legislative Assembly for the Australian Capital Territory. The Standing Committee on Planning and Environment is the committee established by the Fifth Assembly to do this.
5. The *Act* does not place any requirements on the committee's consideration of the draft variation but does require the Government to consider any recommendation that the committee may make in relation to the "draft plan variation, background papers and reports submitted"³. The committee's reports inform not only the Government but also all Members of the Assembly on the committee's deliberations and provide a context for the Assembly to consider the Government's approved variation.

¹ *Land (Planning and Environment) Act 1991*(the Land Act), section 7 (2).

² *ibid.*, section 7 (1).

³ *op.cit.*, the Land Act, section 26(2).

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Summary of recommendations

Recommendation No. 1

The Committee recommends that Draft Variation No. 150 be approved by the Assembly subject to sufficient attention being given to the safety aspects of adjacent and adjoining blocks in Deakin, as suggested by the AAT.

**Mrs Vicki Dunne MLA
Chair**

June 2003

1. Introduction

- 1.1 The Committee received the documentation on Draft Variation No. 150 on 21 March 2003. The Committee's report to the Legislative Assembly includes some relevant background to give context to Draft Variation No. 150, this also serving as a useful basis of some of the Committee's deliberations.
- 1.2 Draft Variation No. 150 appears to be the culmination of a series of negotiations and development matters that began in 1998 when '...negotiations on the redevelopment of the land leased by the Croatia Deakin Football Clubinvolved extensive consultations with members of the community, the Burley Griffin Local Area Planning and Advisory Committee, other government agencies and members of the Assembly...' ⁴. The then Government made an agreement with the Croatia Deakin Football Club Incorporated in 2000 to give it a new concessional lease over the oval and the grant of adjacent land for residential units. This was Block 16 Section 36 Deakin.
- 1.3 Deakin Oval has been the subject of discussion and debate on a number of occasions in the Legislative Assembly. It mentioned in the Assembly in 1998, when it was cited to as one of a number of leased enclosed ovals included in public land, when Draft Variation No. 97 (Braddon Section 30 Block 1 Northbourne Oval) was tabled⁵. In late November 2000, Block 15 Section 36 Deakin (which fronts Adelaide Avenue) was granted as a lease to the Croatia Deakin Football Club Incorporated as part of a comprehensive redevelopment proposal of the local area to upgrade the existing oval and car park, and to create new accessible public open space facilities and new residential accommodation. The deed was signed on 15 September 2000 by Ms Julie McKinnon on behalf of the Australian Capital Territory and Messrs Stanko Milin and Ivan Domuzet, both Directors of the Croatia Deakin Football Club Incorporated⁶, and then the lease was tabled in the Assembly on 28 November 2000 in accordance with Section 216A of the Land (Planning and Environment) Act 1991, as part of a suite of leases granted by direct grant, leases granted to community organisations, leases granted for less than market value and leases granted over public land⁷.
- 1.4 To accept the new lease of a smaller parcel of land, the Croatia Deakin Football Club Incorporated surrendered an existing lease over Block 5 Section 36 Deakin (in Duff Place/Hopetoun Circuit near the Deakin Shops) so that the Government could subdivide Block 15 Section 36 into three new blocks for new oval facilities, car park, public urban open space (Deakin Anticline) and residential use. At that time, the proposal was agreed by the then Government to be a part of a holistic redevelopment package, part of which was the direct sale of Block 2 Section 33 and Block 15 Section 36 to the Croatia Deakin Football Club Incorporated for the development of 52 dwelling units. The proposal, as detailed in the Deed of 15 September 2000, is that:

⁴ Hansard 2001 Week 2 27 February, Page 340, Mr Brendan Smyth as Minister for Urban Services

⁵ Hansard 1998 Week 3, 26 May Page 603, Mr Brendan Smyth MLA as Minister for Urban Services

⁶ Deed Executed between the Australian Capital Territory and Croatia Deakin Football Club Incorporated on 15 September 2000 for Block 2 section 33; Block 5 Section 36 Division of Deakin

⁷ Hansard 2000 Week 11, 28 November page 3307, Mr Brendan Smyth MLA as Minister for Urban Services

- a. 24 Residential Units would be built on Block 15 Section 36 Deakin;
 - b. Block 16 Section 36 would be developed as the oval and car park;
 - c. The parties (Australian Capital Territory and the Croatia Deakin Football Club Incorporated) agree that the premium payable by the Club for Block 15 is \$1,200,000.00; and
 - d. 28 Residential Units would be built on Block 2 Section 33 Deakin.
- 1.5 A copy of the master plan report for the project, which underpinned the arrangements with the Australian Capital Territory, was tabled on 28 November 2000⁸. The Government signalled at that time that a variation to the Territory Plan for Block 15 Section 36 Deakin would be required. Block 2 Section 33 did not require a variation to the Territory Plan as the land was already subject to a Residential Land Use Policy.
- 1.6 Blocks 14, 15 and 16 are currently designated as Restricted Access Recreation land. Draft Variation No. 150 proposes to change:
- a) the existing land use policy applying to Block 15 Section Deakin from a Restricted Access Recreation Land Use Policy with (Public Land 'Ph' Overlay) to a Residential Land use Policy; and
 - b) the existing land use policies on Block 14 Section 36 Deakin to the Urban Open Space Land Use Policy (with a Public Land 'Pe' Overlay)⁹.
- Appendix 2 contains two illustrations, which show the existing land use policies, and the land use policies post the approval of Draft Variation No. 150.
- 1.7 Appendix 1 to this report provides references to statements made in the ACT Legislative Assembly on 27 February 2001, 28 August 2001 and 10 July 2000. The statements in the Hansard of the Legislative Assembly show the extent to which the matter has been exposed in the public arena.

⁸ Hansard 2000 Week 11, 28 November, page 3307

⁹ PALM defines 'Pe' Overlay to mean that it is a public land reserved for the purposes of an urban open space- see Draft Variation No. 150 June 2001, page 5.

2. Draft Variation No. 150 To Proceed

- 2.1. There is evidence to confirm that Draft Variation has been subjected to considerable public comment and consideration over the last five years. The Planning and Land Management Group (PALM) sustained eleven submissions, following:
- a. the June 2001 version going out for public comment on 7 June 2001;
 - b. a copy of the Draft Variation being forwarded to sixty-seven organisations and individuals; and
 - c. a letterbox drop in the Deakin/Yarralumla areas.
- 2.2 The Committee considered the issues raised in the submissions in detail together with the decisions of the Administrative Appeals Tribunal (AAT) of 28 February 2002 and 20 March 2003 in respect of Blocks 14, 15 and 16 Section 36 Deakin. The Tribunal on both occasions had considered applications to construct a soccer field and associated facilities on Block 16 Section 36 Deakin, and to develop a public park on the adjoining Block 14¹⁰. The AAT recorded that ‘the Tribunal found that the proposed development of the sporting facilities on Block 16 met the requirements of the Restricted Access Recreation Land Use Policies of the Territory Plan, subject to some minor constraints being imposed. But it further found that the development of Block 16, and in particular the construction of the perimeter fence of the soccer field, might have an effect on the safety of Block 14¹¹.
- 2.3 The Committee concurs with the comments made by the AAT in its 20 March 2003 decision that ‘further extensive consultation at this stage would not necessarily be helpful’, recognising at the same time that this ‘development proposal now has a long and somewhat contentious history’. The Committee therefore concluded that there would be no value in its calling for its own submissions on the matter. The Committee believes that Draft Variation No. 150 has been subjected to exhaustive community consultation, in addition to its having been considered on two occasions by AAT.
- 2.4 The Committee recommends that Draft Variation No. 150 be approved by the Assembly subject to sufficient attention being given to the safety aspects of adjacent and adjoining blocks in Deakin, as suggested by the AAT. The Committee is also concerned that the longevity of this seemingly contentious issue has contributed to a degree of uncertainty for the community of Deakin. The Committee strongly believes that it is now time for this uncertainty to be rectified.

¹⁰ Australian Capital Territory Administrative Appeals tribunal Land and Planning Division, 20 March 2003, Ms P O’Neil, Senior Member.

¹¹ Australian Capital Territory Administrative Appeals tribunal Land and Planning Division, Decision 20 March 2003.

Recommendation No. 1

The Committee recommends that Draft Variation No. 150 be approved by the Assembly subject to sufficient attention being given to the safety aspects of adjacent and adjoining blocks in Deakin, as suggested by the AAT.

3. MATTERS OF PROCESS-LESSONS LEARNED

- 3.1 Over the years since 1998, there have been perceived irregularities by the community in the then Liberal Government's agreement with the Croatia Deakin Soccer Club over the redevelopment of the Deakin Soccer Oval. The negotiations on the redevelopment of the land leased by the Croatia Deakin Football Club commenced in 1998, and now some five years has passed before a Draft Variation to change the land use policy has been able to be prepared and referred to this Committee. The Committee feels obliged to make some brief comments about the process in the interests of efficient government, and good public administration.
- 3.2 The process from 1998 appears to have occurred in fits and starts and has created an atmosphere of uncertainty for both the community and the developers. For example, when the then Government thought the process could be signed off on, it was delayed in 2000 because the lease variation which would have delivered on the agreement, was not supported by the then Opposition. This caused the process to be changed from a lease variation to one where the Club had to totally surrender its land, and then the Government had to regrant the land.
- 3.3 It is the belief of the Committee that governments of whatever persuasion should facilitate transparent and clear processes that avoid the extent of delay and uncertainty that has attended this development proposal. In addition, the manner in which it has occurred has resulted in somewhat compromising the Committee's ability to objectively consider the issues relating to land policy as they have become clouded by the matters relating to process. The Committee has been placed in a position where the elapse of time and the level of commitment have higher priority than the soundness of the land policies.
- 3.4 In its deliberations, the Committee hopes as a result of the protracted processes involved in this projects that present and future governments would learn the lesson that good land policy is an effective marriage of community needs, development opportunities, and certainty, and practice it.

Appendix 1 – HANSARD REFERENCES 2000 and 2001-BLOCK 16, SECTION 36 DEAKIN

1. Hansard 2001 Week 2, 27 February Page 340

Statement by Minister for Urban Services **MR BRENDAN SMYTH** (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services - Ms Tucker asked whether a recommendation of the conservator was sought regarding the direct sale of block 16, section 36 Deakin

2. Hansard 2001 Week 10, 28 August 2001 Page 3417

MR BRENDAN SMYTH (Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services) Ms Tucker has raised a matter of public importance regarding irregularities in the government's agreement with the Croatia Deakin Soccer Club over the redevelopment of the Deakin soccer oval. This has been of some interest in the Assembly previously. I think much has already been canvassed.

3. Hansard 2001 Week 10, 28 August Page 3418

MR SIMON CORBELL-re the matter in relation to the proper administration of the leasehold system. and the key inquiry during that time was the inquiry into the administration of ACT Leasehold, otherwise known as the Stein inquiry.

4. Hansard 2001 Week 10, 28 August Page 3414

Redevelopment of Deakin Soccer Oval-Discussion of matter of public importance

MS KERRIE TUCKER- Irregularities in the Government's agreement with the Croatia Deakin Soccer Club over the redevelopment of the Deakin Soccer Oval.

5. Hansard 2000 Week 7, 10 July Page 2463

ANSWERS TO QUESTIONS

Deakin Soccer Oval-Redevelopment (Question No 262)

Appendix 2 – EXISTING LAND USE POLICIES AND PROPOSED LAND USE POLICIES UNDER DRAFT VARIATION NO. 150

The existing land use policies and area subject to this Draft Variation are shown at Figure 1 below¹².

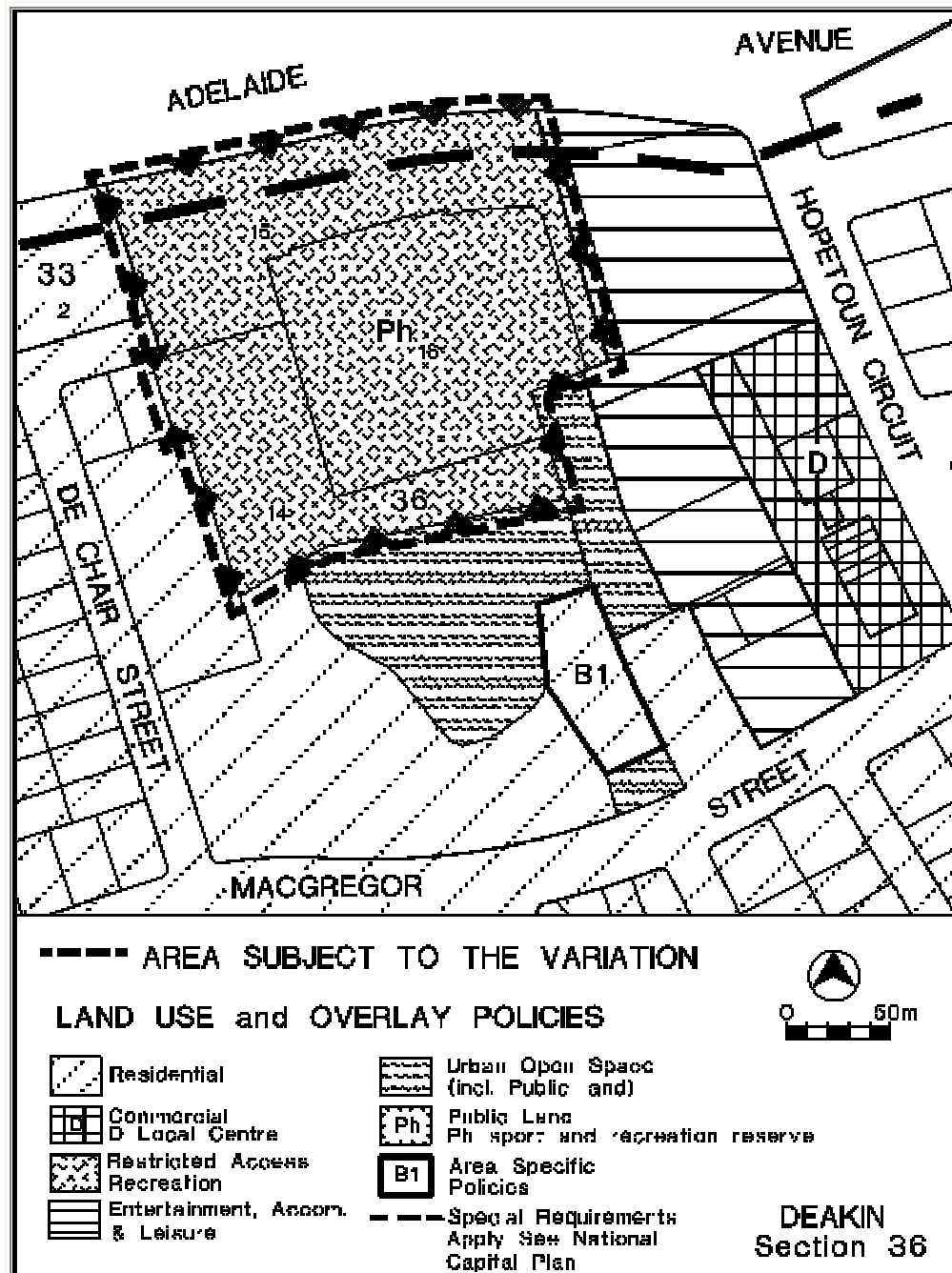


Figure 1 Existing Territory Plan Map

¹² PALM Draft Variation No. 150 June 2001, Page 4.

Draft Variation No. 150 will vary the "Area Subject to the Variation" by:

- i. Deleting the existing Restricted Access Recreation Land Use Policy with Public Land 'Ph' Overlay on Block 15 Section 36 Deakin and substituting the Residential Land Use Policy; and
- ii. Deleting the existing Restricted Access Recreation Land Use Policy with Public Land 'Ph' Overlay on Block 14 Section 36 Deakin and substituting the Urban Open Space Land Use Policy with a Public Land 'Pe' Overlay¹³.

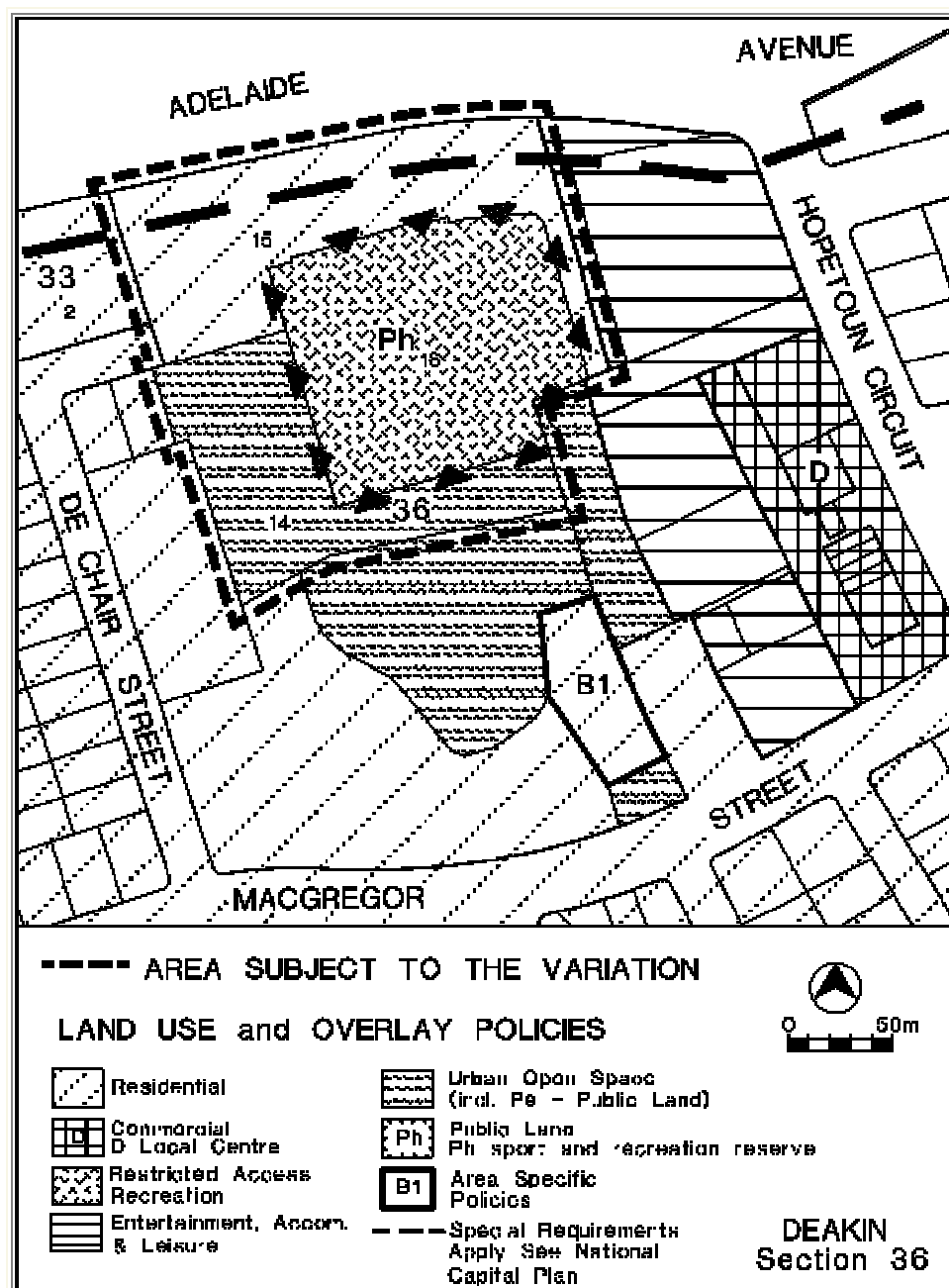


Figure 2 Proposed Territory Plan Map

¹³ PALM Draft Variation No. 150 June 2001, Page 7.

