



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND  
ENVIRONMENT

## **Draft Variation to the Territory Plan No. 258**

### **Belconnen Labor Club Section 48 Belconnen**

JUNE 2005

**Report 11**

## Committee membership

Chair                                      Mick Gentleman MLA

Deputy Chair                            Zed Seselja MLA

Mary Porter AM MLA

Secretary:                                Hanna Jaireth

Administration:                        Linzi Lamont

## Resolution of appointment

On 7 December 2004 the ACT Legislative Assembly agreed to establish general purpose standing committees as follows:

- (1) The following general purpose standing committees 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: ...

(e) a Standing Committee on Planning and Environment to examine matters related to planning, public works and land management, conservation and heritage, transport services, and environment and ecological sustainability.  
....<sup>1</sup>

The Assembly also agreed that if the Assembly is not sitting when the Standing Committee on Planning and Environment has completed consideration of a report on draft plan variations or draft plans of management referred to the Committee by the Minister under the *Land (Planning and 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.<sup>2</sup>

## Terms of reference

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

The Minister 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 section 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.

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<sup>1</sup> Legislative Assembly of the ACT, *Minutes of Proceedings*, No. 2–7 December 2004, pp.12–16.

<sup>2</sup> Legislative Assembly of the ACT, *Minutes of Proceedings*, No. 2–7 December 2004, pp.12–16.

## Preface

Both Federal and ACT law and policy governs planning in the ACT. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth)<sup>3</sup> establishes the National Capital Authority, which prepares and administers the National Capital Plan. The Act also enables the Legislative Assembly to establish a statutory planning authority – now the Planning and Land Authority<sup>4</sup> – to develop and implement the Territory Plan. The *Land (Planning and Environment) Act 1991* (ACT)<sup>5</sup> (the Act) requires the Territory Plan to set out the planning principles and policies for giving effect to its object,<sup>6</sup> which is:

to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an ecologically sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.<sup>7</sup>

The Plan includes both a written statement and a map. The written statement contains general planning principles (Part A), specific land use policies (Part B), overlay provisions (Part C) and definitions of terms (Part D). The Territory Plan map shows which land use policies and overlays in the written statement apply to particular sections of land in the Territory. The Territory Plan is developed and implemented taking account of other strategic ACT Government policy documents such as *The Canberra Plan* and *People Place Prosperity: A Policy for Sustainability in the ACT*.<sup>8</sup>

Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. The Planning and Land Authority prepares these for stakeholder comment. There can be a number of versions of a draft variation depending on the consultation program.

The Minister is required by the Act to refer each draft variation, within 28 days of receiving it, to an appropriate committee of the Assembly – currently the Standing Committee on Planning and Environment – for consideration and report.<sup>9</sup>

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<sup>3</sup> Accessible at <<http://scale.law.gov.au/html/pasteact/0/160/top.htm>>.

<sup>4</sup> Established by the *Planning and Land Act 2002* (ACT).

<sup>5</sup> Accessible at <<http://www.legislation.act.gov.au/a/1991-100/current/pdf/1991-100.pdf>>.

<sup>6</sup> Land (Planning and Environment) Act 1991, sub-section 7(2)).

<sup>7</sup> Land (Planning and Environment) Act 1991, sub-section 7(1).

<sup>8</sup> Accessible at <<http://www.cmd.act.gov.au/canberraplan/>> and <<http://www.sustainability.act.gov.au/policy.html>>.

<sup>9</sup> Land (Planning and Environment) Act 1991, section 25.

The Minister is required to have regard to the Committee's recommendations before approving the proposed variation and tabling it in the Assembly (see below), or returning it to the Planning and Land Authority with written directions for further action.<sup>10</sup>

The Territory, the Executive, a Minister or a Territory authority must not do or approve anything that is inconsistent with the Territory Plan, or the proposed draft variation, in relation to land that is subject to a draft variation, once the draft variation has been notified for public consultation under the Legislation Act and until it commences operation, is disallowed by the Legislative Assembly, or is withdrawn.<sup>11</sup>

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.<sup>12</sup> If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.<sup>13</sup> Unless wholly or partially disallowed by the Assembly within five sitting days, the variation will commence on the date nominated by the Minister.

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<sup>10</sup> Land (Planning and Environment) Act 1991, paragraphs 26(1)(a) and (b), sub-section 26(2).

<sup>11</sup> Land (Planning and Environment) Act 1991, section 9.

<sup>12</sup> Land (Planning and Environment) Act 1991, sub-section 26(2).

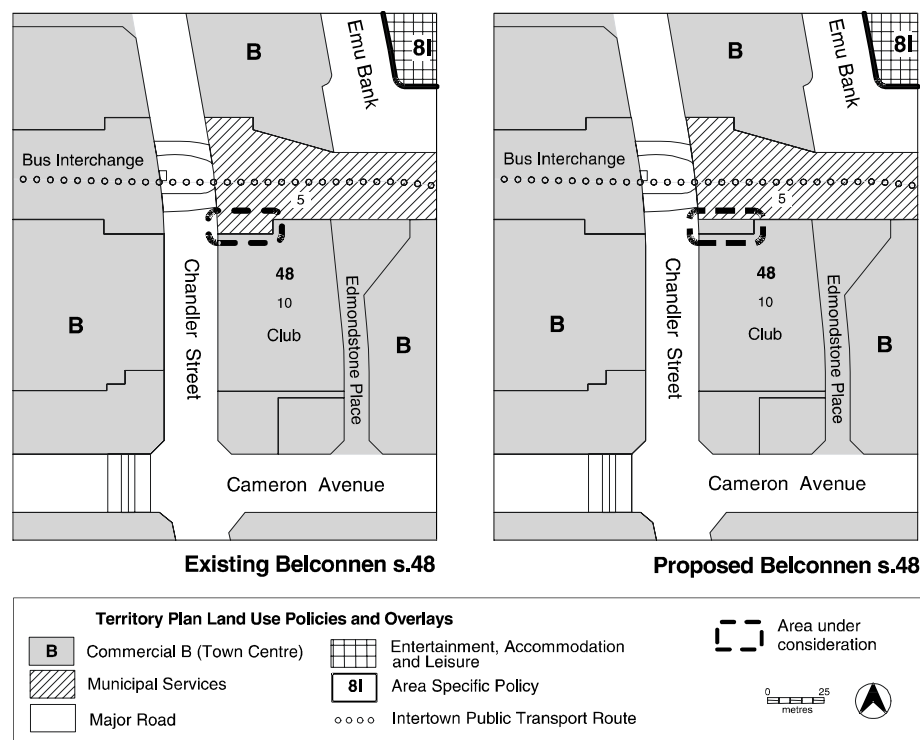
<sup>13</sup> Land (Planning and Environment) Act 1991, section 29.

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## INTRODUCTION

- 1.1 This draft variation proposes to amend the Territory Plan Map and Written Statement to apply 'Commercial B' land use policy to 157m<sup>2</sup> in Block 5 Section 48 Belconnen. This area is currently subject to 'Municipal Services' land use policy. The rest of Block 5 Section 48 is used as a bus access road into Belconnen Bus interchange, a pedestrian pathway from the interchange to a public car park in Edmondstone Place, and landscaping.
- 1.2 The Canberra Labor Club, on Block 10, Section 48, previously used this land as an outdoor café area but now wants to use the area for club purposes (i.e. club, drink establishment and restaurant). The Labor Club intends to seek a direct grant of land (i.e. to purchase the land without competition) once the variation process is complete.
- 1.3 The current (left hand map) and proposed (right hand map) land use policy are as follows:



**FIGURE 1 – EXISTING AND PROPOSED LAND USE POLICY**

- 1.4 This proposed variation has the support of the Planning and Land Council and no objections were raised during the Planning and Land Authority's consultation with the Conservator of Flora and Fauna, the ACT Heritage Council and the National Capital Authority. The Minister for Urban Services raised various issues that the Planning and Land Authority says will be addressed during lease and development negotiations. The Department of Disability Housing and Community Services supports the proposed variation.

## **Committee comments in relation to the proposed variation**

- 1.5 The Chair and Ms Porter have no comments to make in relation to this proposed variation.

## **Committee comments in relation to declared possible conflicts of interest**

- 1.6 Both Government members of the Committee declared at the Committee's meeting on 4 June 2005 that they may have a possible conflict of interest in relation to this proposed variation. Mr Gentleman declared that he was a former Labor Club Board member, as was Ms Porter. Both were currently members of the club. The Canberra Labor Club makes donations to the Labor Party but not to individual candidates. The Committee agreed to seek the advice of the Manager of Committees and the Clerk of the Legislative Assembly in relation to this matter.
- 1.7 The Clerk advised the Committee, through the Secretary, on 14 June 2005 that the Committee's options were
- to request of the Assembly that members with a declared conflict be discharged from the committee and that other members be appointed for the inquiry in relation to DV258 only; or
  - for members who have declared an interest to ensure that the minutes reflect their declaration of a conflict (which could note its minor nature) and any agreement by Committee members, notwithstanding that conflict, that members can continue to inquire into the matter.

- 1.8 The Clerk noted that the first option was at the extreme end of the scale and that for possible and minor declared conflicts of interest taking the second option would be acceptable. The Clerk also confirmed that a report to the Assembly can be that the Committee has no comment to make in relation to a DV.
- 1.9 The Committee regrets that Mr Seselja withdrew from deliberations on this proposed variation on 24 June 2005. The approach of providing a 'no comment' response is taken in many reports by the Standing Committee on Legal Affairs when performing the functions of a scrutiny of bills and subordinate legislation committee. The fact that two members have made declaration of a possible conflict of interest, of a very minor nature, in relation to the proposed variation, does not detract from the appropriateness of this response. Each member of the Committee agreed that they could not identify any substantive issues that merit comment.
- 1.10 Government members of the Committee declared a possible conflict of interest but it should be noted by stakeholders that this interest is not peculiar or personal to the members involved. Many members of the Canberra community, on all sides of politics, are members of the Labor Club for social reasons, so membership of the Club should not disentitle Committee members from issuing a 'no comment' report on this draft variation. The fact that the Labor Club supports the Labor Party does not mean that Government members of the Committee have a direct pecuniary interest in this proposed variation. Donations to the party are managed separately to campaign funds so there is no direct pecuniary benefit for members. The Committee's recommendations are advisory and must be considered by the Minister for Planning before making a decision in relation to a proposed variation, but they are not determinative. The Committee's comments could not result directly in any financial gain or loss for the club.

Mick Gentleman

Chair

June 2005