



Legislative Assembly for the ACT

STANDING COMMITTEE ON PLANNING AND
ENVIRONMENT

**Draft Variation to the Territory Plan No. 205
Deakin Block 11 Section 68 (Oasis Leisure
Centre) Proposed Office Use**

APRIL 2005

Report 7

Committee membership

Chair	Mick Gentleman MLA
Deputy Chair	Zed Seselja MLA
	Mary Porter AM MLA

Secretary:	Hanna Jaireth
Administration:	Linzi Lamont
Research assistance:	Catherine O'Connor, Ann Welburn

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....

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.¹

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.

¹ 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)² 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 ACT Planning and Land Authority – to develop and implement the Territory Plan. The *Land (Planning and Environment) Act 1991* (ACT)³ (the Act) requires the Territory Plan to set out the planning principles and policies for giving effect to its object,⁴ 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.⁵

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*.⁶

Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan. The ACT 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.⁷

² Accessible at <<http://scale.law.gov.au/html/pasteact/0/160/top.htm>>.

³ Accessible at <<http://www.legislation.act.gov.au/a/1991-100/current/pdf/1991-100.pdf>>.

⁴ Land (Planning and Environment) Act 1991, sub-section 7(2)).

⁵ Land (Planning and Environment) Act 1991, sub-section 7(1).

⁶ Accessible at <<http://www.cmd.act.gov.au/canberraplan/>> and <<http://www.sustainability.act.gov.au/policy.html>>

⁷ 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 ACT Planning and Land Authority with written directions for further action.⁸

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.⁹

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.¹⁰ If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.¹¹ Unless wholly or partially disallowed by the Assembly within five sitting days, the variation will commence on the date nominated by the Minister.

⁸ Land (Planning and Environment) Act 1991, paragraphs 26(1)(a) and (b), sub-section 26(2).

⁹ Land (Planning and Environment) Act 1991, section 9.

¹⁰ Land (Planning and Environment) Act 1991, sub-section 26(2).

¹¹ Land (Planning and Environment) Act 1991, section 29.

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

- 1.59 The Committee recommends that the ACT Planning and Land Authority develop a Master Plan for the West Deakin area which identifies an enlarged designated office employment area and addresses 'precinct specialisation' issues, transport (including traffic, parking, public transport, and bicycle and pedestrian access), environmental issues, and retail facilities.
- 1.60 If resources are not available for a Master Planning process in the 2005-06 budget, these issues should be addressed in a revised DV205 or new draft variation.

RECOMMENDATION 2

- 1.61 The Committee recommends that the Minister for Planning request that the ACT Planning and Land Authority amend DV205 to enable the office block to be built before the Oasis pool is refurbished, but on condition that the proponent provide a performance bond to guarantee that the pool is upgraded to the satisfaction of the Authority.

RECOMMENDATION 3

- 1.62 The Committee recommends that the proponent be required to provide security lighting for the car park on Block 23.

RECOMMENDATION 4

- 1.63 The Committee recommends that the ACT Planning and Land Authority ensure that access to the Oasis Leisure Centre for persons with a disability fully complies with relevant standards and guidelines.

Introduction

- 1.1 On 20 September 2004, in accordance with the *Land (Planning and Environment) Act 1991* (ACT), the Minister for Planning, Mr Simon Corbell MLA, referred a copy of *Draft Variation to the Territory Plan No. 205 – Deakin Block 11 Section 68* (Oasis Leisure Centre) Proposed Office Use (DV205) to the Standing Committee on Planning and Environment for consideration and report.
- 1.2 DV205 proposes to vary the Territory Plan Written Statement by adding a policy that is specific to Block 11 Section 68 Deakin. This will enable the lessee to erect a building for office use.¹² The maximum height of this building is three storeys. The current and proposed land use policies for this block are represented in map form at Appendices 1 and 2.
- 1.3 Block 11 Section 68 is currently subject to an Entertainment, Accommodation and Leisure land use policy under the Territory Plan. The block has a swimming pool, indoor sports complex, gymnasium, child care centre, pathology laboratory and medical suites. It is bordered by public roads on three sides and to the west by urban open space (playing fields) and a Canberra Urban parks depot.
- 1.4 Block 11 Section 68 is subdivided into 17 units under the *Unit Titles Act 2001* (ACT). The current lessee, Cypcill Pty Ltd, aims to further develop the site by converting part of the recreation complex and medical suites to office use, and adding a three-storey office block comprising 4 500m² gross floor area.¹³
- 1.5 The proposed variation also includes a requirement that before the purpose clause for any unit within Unit Plan No 1556 is varied, the indoor pool on Unit 17 must be refurbished to the satisfaction of the Territory under a deed of agreement. Landscaping, and on-site car parking facilities are also to be provided in accordance with ACT Planning and Land Authority guidelines.
- 1.6 The Committee considered DV205 at meetings on 11 and 27 January 2005, 11 March 2005, 31 March 2005, and 19 and 26 April 2005.

¹² The amendment add to Part B8 – Entertainment Accommodation and Leisure Land Use Policies an 8N Area Specific Policy overlay for Block 11 Section 68, Deakin.

¹³ McCann Property and Planning, Planning Study Block 11 Section 68 Deakin Oasis Complex, 16 January 2004, p.4.

Background

- 1.7 The 50-metre swimming pool on part of Block 11 Section 68 had initially been government-owned but was later sold to Cypcill Pty Ltd. It is in urgent need of substantial renovation as the pool infrastructure is more than 30 years old, and is in poor condition. Essential renovation works had been costed at \$3.7mil in 2004.¹⁴ DV205 provides that the proposed developments on the site will enable the lessee to recover the substantial funds that must be first expended on the pool refurbishment.
- 1.8 Several swimming clubs operate at the centre, including the Burley Griffin Swimming Club, Deakin Swimming Ltd and Telopea Amateur Swimming Club Inc. The average daily attendance at the pool is 400. Seven hundred and fifty (750) children attend learn to swim classes each week, which is also attended regularly by 15 schools, and 12 aged groups. An estimated 4 500 families are associated with swim clubs that use the facility. The membership of the Burley Griffin Swimming Club is about 600 and the Telopea Amateur Swimming Club is about 400.¹⁵ These clubs attracted a significant number of members from the Deakin Health Spa, which closed its swimming pool in October 2002.¹⁶ The Centre is close to three retirement villages, the John James Memorial Hospital and the Lidia Perin Memorial Hospital. This enables significant numbers of aged patrons to use the facilities during warm months.

Defined Office Employment Centres

- 1.9 On 9 March 2005 the National Capital Authority advised the Committee that Amendment 44 to the National Capital Plan (Office Employment Location policies) had been approved by the Minister on 7 March 2005 and tabled in the Australian Parliament.¹⁷
- 1.10 Amendment 44 allows 'major office employment' (undefined in the National Capital Plan) to be located within certain Defined Office Employment Centres in the ACT. It also provides that 'private sector offices may be located in any

¹⁴ McCann Property and Planning, Planning Study Block 11 Section 68 Deakin Oasis Complex, p.4.

¹⁵ Submission No. 8. More detailed, disaggregated statistics are provided in Submission No 5. Others in Submission No. 4.

¹⁶ M. Doherty, 'One last lap at Prosser', 1 October 2002, p.5.

¹⁷ National Capital Authority, Australian Capital Territory (Planning and Land Management) Act 1988 National Capital Plan Amendment 44 (Office Employment Location Policies), March 2005, accessible at < http://downloads.nationalcapital.gov.au/plan/NCP/amendments/Amdt_44.pdf >

Defined Office Employment Centre'.¹⁸

- 1.11 The NCA advised the Committee that while the Oasis Leisure Centre currently fell outside the Defined Office Employment Centres as defined in Amendment 44, the Territory could vary the Territory Plan to redefine the West Deakin Defined Office Employment Centre to include that site. The Authority advised further that new office developments outside Defined Office Employment Centres are generally discouraged, and permitted only when considered to be in the public interest after the full transport and environmental effects of such decisions have been considered.¹⁹
- 1.12 Amendment 44, dated March 2005, refers to Defined Office Employment Centres within the North-South Corridor as including 'West Deakin [as shown in Figure 6 (Office Sites-Deakin) in Part B2E of the Territory Plan]'.²⁰ However Figure 6 is concerned with office sites in Bruce. The Territory Plan, following Variation No 210 (2003) provides that office sites in Deakin are as in Figure 5 in Part B2E of the Territory Plan.²¹ Figure 5 is reproduced in Appendix 3.
- 1.13 The intent of the Authority's suggestion is that unless the ACT Planning and Land Authority amends Part B2E of the Territory Plan to extend its office sites, both the National Capital Authority and the ACT Planning and Land Authority should discourage further office employment in West Deakin outside the Defined Office Employment Centres, and only permit it if 'considered to be in the public interest after the full transport and environmental effects of such decisions have been considered'.²²
- 1.14 By virtue of section 11 of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth) the ACT Government must not do an act that is inconsistent with the National Capital Plan, and any enactment is invalid to the extent of any inconsistency. This means that the ACT Planning and Land Authority should have traffic and environmental issues fully assessed or discourage office employment on the proposed site.

¹⁸ National Capital Plan Amendment 44 (Office Employment Location Policies) paragraph 3.3(h).

¹⁹ Letter from Anabelle Pegrum, Chief Executive, National Capital Authority, dated 9 March 2005.

²⁰ National Capital Plan Amendment 44 (Office Employment Location Policies) paragraph 3.3(c).

²¹ Accessible at <http://www.actpla.act.gov.au/tplan/web/default.htm>

²² National Capital Plan Amendment 44 (Office Employment Location Policies) paragraph 3.3(e).

Planning for West Deakin

- 1.15 In the Fifth Assembly, the former Standing Committee on Planning and Environment made various recommendations in relation to Draft Variation No 210 to the Territory Plan concerning West Deakin. These included that buildings be limited to four storeys, that proposals be assessed against high quality sustainable development systems, and that all future variations to the Territory Plan relating to Deakin be developed within the auspices of the Canberra Plan and Deakin Local Area Plan.²³
- 1.16 The *Deakin Neighbourhood Plan* also recommends various strategies for making West Deakin a 'lively, accessible, safe and well-maintained commercial, professional and community environment' with a 'strong commercial, professional community spirit'.²⁴ These are:
- P3-2 Maximise landscape setting by encouraging high-quality landscaping in new commercial developments.
 - P3-2 Maintain West Deakin's diverse commercial, professional and community character.
 - P3-3 Retain and enhance physical links to Residential Deakin.
 - P3-4 Retain and enhance view corridors to Red Hill.
 - P3-5 Create a healthy environment via the provision of small, intensively used open spaces with appropriate solar access.
 - P3-6 Ensure clear and easy networks for vehicles, pedestrians, and cyclists, particularly between West Deakin and Residential Deakin.
 - P3-7 Prioritise the needs of pedestrians.
 - P3-8 Provide adequate carparking spaces for both workers and visitors.
 - P3-9 Support the use of public transport.
 - P3-10 Ensure new commercial developments have adequate on-site parking.
 - P3-11 Develop a Master Plan for West Deakin to promote the better

²³ Legislative Assembly Standing Committee on Planning and Environment, *Draft Variation No. 210 to Territory Plan: Deakin Section 35 Block 2 (Site of Former Deakin Motor Inn) and Section 35 Block 28 (Canberra West Bowling Club, also known as the West Deakin Hellenic Bowling Club) Commercial Policy and Residential Use, Report No 19, June 2003, p.9.*

²⁴ ACT Planning and Land Authority, *Deakin Neighbourhood Plan: A Sustainable Future for Deakin*, February 2003, p.32.

integration of a variety of land uses.²⁵

Consultation comments

Proponent's consultations

- 1.17 During the period July 2002 to September 2003, Cypcill Pty Ltd consulted the local community and tenants and unit owners at the site about the proposed development. The Deakin Neighbourhood Planning Committee and the Burley Griffin Local Area Planning Advisory Committee also considered the proposal and gave their support.²⁶

Statutory consultations

- 1.18 On 27 May 2004, the ACT Planning and Land Authority released DV205 for public comment until 8 July 2004.
- 1.19 In accordance with the *Land (Planning and Environment) Act 1991*, the ACT Planning and Land Authority also sought and considered the views of the National Capital Authority, the ACT Heritage Council and the Conservator of Flora and Fauna.
- The National Capital Authority advised on 8 January 2004, 6 April 2004 and 8 July 2004 that the proposed variation was inconsistent with section 3.3(a) of the (then) National Capital Plan.
 - The ACT Heritage Council advised on 25 June 2004 that there were no known heritage issues in relation to the site.
 - The Conservator of Flora and Fauna advised on 28 April 2004 that provided that protection of significant trees was taken into account in any development proposals, the Conservator had no concerns about the proposal.

Committee consultations

- 1.20 The Planning and Environment Committee and the Secretary met at the Oasis

²⁵ ACT Planning and Land Authority, *Deakin Neighbourhood Plan*, p.32.

²⁶ McCann Property and Planning, *Planning Study: Block 11 Section 68 Deakin Oasis Complex*, 16 January 2004, p.5.

Leisure Centre site with representatives of the ACT Planning and Land Authority on 11 January 2005. Mr Neil Savery, Chief Planning Executive, and Mr Hamish Sinclair, Manager, Territory Plan Coordination Section, attended and responded to Members' questions.

1.21 Members resolved to hold a public hearing in relation to the proposed variation on 11 January 2005 and submissions were invited by way of advertisements in *The Canberra Times* and *The Chronicle*, and in letters to stakeholders. Appendix 5 lists the 8 submissions received in response. Public hearings were held on 11 and 31 March 2005. The key issues raised by stakeholders in submissions to and in hearings with the Committee are as follows:

- McCann Property and Planning, on behalf Cypcill Pty Ltd, told the Committee that the existing swimming pool requires a major investment to ensure its viability. The current lessee has been subsidising the swimming clubs using the facility by charging less than market rent. The lessee has made substantial losses and cannot guarantee that the pool will remain open beyond the current sub-lease term, which will end in approximately 18 months time.²⁷
- The Burley Griffin Swimming Club, Deakin Swimming Ltd and Telopea Amateur Swimming Club Inc fully support the proposal to link the prior refurbishment of the Oasis Leisure Centre to permission for the provision of office accommodation on site. Each emphasises the importance of the Leisure Centre for swimming clubs²⁸ and the broader Canberra community, and expresses a willingness to work with other stakeholders to see the facilities significantly enhanced.²⁹
- The Deakin Residents' Association has strong reservations about 'about spot zoning variations to the Territory Plan to change the land use to permit higher order uses'.³⁰ Other submissions support DV205.
- Mr Gaelle Girout supports the refurbishment of the Oasis Leisure Centre.³¹
- Several submissions recommend that the current facilities at the Oasis Leisure Centre be upgraded. The Burley Griffin Swimming Club asks for a

²⁷ Submission No. 8.

²⁸ Submission No. 4, 5, 7.

²⁹ Submission No. 4, 5, 7.

³⁰ Submission No. 3, p.9.

³¹ Submission No. 6, p.2.

heated pool for toddlers for recreation and learn-to-swim classes, a hydrotherapy pool and two more lanes in the large pool.³² The Telopea Amateur Swimming Club recommends that the depth of the pool be increased to 1.8 metres to accord with current diving safety requirements; two more swimming lanes, that the gym facilities be retained and refurbished, and for the parking area opposite the Centre to be resurfaced and have lighting installed.³³ Deakin Swimming Ltd notes that a bitumen car park and better lighting is needed, and Telopea Amateur Swimming Club suggests that the facility be recognised in the *Deakin Neighbourhood Plan*. These clubs note the devastating impact that a closure of the pool would have for their sport given the shortage of alternative venues in the ACT.³⁴ John James Hospital supports the retention of the swimming pool provided it has excellent access for the disabled and access for stretcher patients, and has no objections to the development of a hydrotherapy pool. John James would also prefer that not more than 30% occupancy of the Deakin Oasis site be made available for general office use, as it has a vision for the Deakin West area as a focal point for acute, sub acute and recreational health activities.³⁵

- The ACT Touch Association expresses concerns about the potential of the development to increase traffic moving in and out of Makin Place and Dennison Street, which the Association regards as a dangerous intersection, and increased parking pressure.³⁶

1.22 The Committee discussed traffic issues in Deakin with officials from the ACT Planning and Land Authority on 12 April 2005. Members were advised that Roads ACT was working on a Deakin traffic plan. This includes the Deakin local centre area and West Deakin. This should be available in May or June. Members were also advised that the Land Development Agency would not allow land currently being used as an informal car park for the Oasis Leisure Centre to be leased and developed without requiring replacement car parking to be provided. At this stage there was no pressure for the car park to be released for sale.

³² Submission No. 4.

³³ Submission No. 7, p.2.

³⁴ Submission No. 4, 5, 7.

³⁵ Submission No. 1.

³⁶ Submission No. 2.

- 1.23 The Committee also heard evidence from the Property Council of Australia (ACT) on 19 April 2005. Mr Greg Lyons, President, and Mr Steve Flannery, Deputy President, advised that West Deakin was characterised by small tenancies. Currently there was about a 3.8% vacancy rate.³⁷
- 1.24 The Committee Secretary also consulted with the Canberra Manager of the Kings Swim Program on 11 April 2005.

Committee comments

Transport and environmental issues

- 1.25 As noted above, the National Capital Authority's new National Capital Plan Office Employment Location policy (Amendment 44) requires that employment outside the designated office employment area in Deakin should be discouraged, and only permitted if 'considered to be in the public interest after the full transport and environmental effects of such decisions have been considered'.³⁸
- 1.26 DV205 was referred to the Committee before this new Commonwealth policy was adopted. It does not refer to detailed traffic and environmental studies. The ACT Planning and Land Authority subsequently provided the Committee with the proponent's Planning Study, but the Committee does not think this could be regarded as a 'full' assessment of transport and environmental issues.
- 1.27 Transport and environmental issues can be examined using a variety of mechanisms. It may be that traffic and environmental issues could be examined during the development of a West Deakin Master Plan. Roads ACT's current study of traffic in Deakin may well constitute a 'full' consideration of relevant issues. A preliminary assessment, which the Minister for Planning can direct the proponent to undertake under the *Land (Planning and Environment) Act 1991* (ACT), could also be the mechanism.³⁹ Preliminary assessments are required by Schedule 3 of the Act to address a range of matters, including existing environmental conditions and the potential impact of the project on the physical, human and non-human biological environment.

³⁷ Oral presentation, Standing Committee on Planning and Environment Private Meeting, 19 April 2005.

³⁸ National Capital Plan Amendment 44 (Office Employment Location Policies) paragraph 3.3(e).

³⁹ See Div 4.2 of the Act

- 1.28 The proponent's Planning Study included a brief and favourable assessment of the traffic situation and qualified comments about available parking. Roads and intersections were found to be 'performing within capacity levels' and the proposed development would only cause a 'marginal increase in activity levels', resulting in a 'minimal impact on the local road network'. While parking on and in the vicinity of the site was regarded as 'extensive', the proponent noted that the 317 spaces available were less than suggested in the ACT Parking and Vehicular Access Guidelines.⁴⁰
- 1.29 Various options for increasing the supply of available parking were to be considered in the development approval process, but the proponent's Planning Study assumes that the parking that is now available on Block 23 will continue to be available even if the land is subsequently leased.⁴¹ Block 23 is used by visitors to the Oasis Leisure Centre as an informal car park. Cypcill Pty Ltd has previously covered the cost of upgrading this parking, but it is not sealed and as noted above, users regard this as inadequate.
- 1.30 In the Committee's view, unless the Roads ACT study of Deakin meets the National Capital Authority's requirements, and includes an assessment of the adequacy of public transport, and cycle and pedestrian access, further assessment may be necessary.⁴² In accordance with the ACT Sustainable Transport Plan, the suitability and applicability of current strategies for encouraging travel modes other than by private car should be assessed for West Deakin.
- 1.31 The Committee also recommends that the proponent be required to provide lighting that is adequate for personal security purposes in the car park on Block 23, until the block is leased.

Master Plan for West Deakin

- 1.32 The National Capital Authority has suggested that the ACT could amend Part B2E of the Territory Plan to extend the area in West Deakin where offices can be located. The Committee agrees that this should be done, but in the context

⁴⁰ McCann Property and Planning, Planning Study, p.14.

⁴¹ McCann Property and Planning, Planning Study, pp.12, 13, 14.

⁴² One of the background studies for the CISAC development found that 74% users of swimming centres prefer to travel there by private vehicle, 9% walked, 6% cycled and 4% used public transport: J.A. Nicholas & Associates Pty Ltd, Belconnen Leisure and Aquatic Study, report prepared for ACT Landscape (Total Care Industries), Canberra, November 1997, p.46.

of the development of a Master Plan for West Deakin. As noted above, the *Deakin Neighbourhood Plan* also recommends that a Master Plan for West Deakin be developed. In addition to the need to respond to the National Capital Authority's Office Employment Location Policy, other relevant issues raised with the Committee include:

- the type and availability of retail food outlets to meet the needs of the workers in the area, and
- whether West Deakin should be further encouraged to develop as a focal point for health services and activities, and whether additional planning controls might be necessary to ensure this.⁴³

- 1.33 If resources are not available for a Master Plan, such issues could be explored in a revised or new draft variation.

Priority of works

- 1.34 DV205 currently provides that the lease for Block 11 cannot be varied to permit provision of office accommodation unless the existing indoor swimming pool on Unit 17 has been refurbished. The refurbishment of the swimming pool could probably be done within 12 months.
- 1.35 Cypcill Pty Ltd has objected to this requirement on the grounds that the refurbishment issue should be kept separate from the issue of whether office use is permitted. Cypcill says that the swimming pool has made substantial losses to date,⁴⁴ and Cypcill cannot meet the costs of the refurbishment unless the office building is built first.
- 1.36 The Committee agrees with this concern. If the swimming pool is refurbished before the office accommodation is built, the lessee would have to carry the cost of the refurbishment *as well as* the costs associated with the loss of patronage that could be expected because of the adjacent construction works for the office building. In the Committee's view, it would be more sensible to have the office block built before the pool is refurbished, so that the additional income generated by the office accommodation can be used to help defray some of the refurbishment costs. The ACT Government may also be assisting in other ways such as by waiving payment of betterment tax.

⁴³ Submission No. 1.

⁴⁴ Submission No. 8.

- 1.37 Mr Tony Adams, Principal Planner with McCann Property and Planning, told the Committee at a public hearing on 31 March 2005 that the development envisaged by DV205 may no longer be economically viable. He said:

[T]he actual financing of this project is more difficult than it was when it was originally conceived. The building has got smaller. The car parking is required to be on site. The financing of the pool project has to be up front. *Ideally, you would do the office development and then, with an income stream, use that to fund the pool development. Obviously there would need to be an arrangement to guarantee that that result came through.* Financing it the other way around is quite difficult. [Emphasis added]⁴⁵

- 1.38 The Committee recognises that it is difficult to build and run public swimming pools at a profit, and particularly 50 metre pools. Capital costs tend not to be fully recoverable.⁴⁶ The fixed operating costs of 8-lane, 50 metre x 21 metre lap pools are substantial. They include, for example, estimated annual energy costs of more than \$300 000, chemical and water treatment costs of more than \$40 000, and maintenance of more than \$30 000. These costs reduce by about \$144 000 for a 25 metre pool.⁴⁷ Insurance premiums and staff salaries are also significant costs.
- 1.39 The ACT Government subsidises the swimming pools it operates. This was in the order of \$1.7mil in 1994–5 and \$1.5mil in 1995–6,⁴⁸ but the cost of ‘pool subsidy and asset maintenance’ had reduced to \$853 793 in 2003–04.⁴⁹
- 1.40 Private centres also have to compete with the other facilities available in the market. These are represented on the map at [Appendix 4](#). The ACT Government-owned pools in Canberra are at the Active Leisure Centre (Erindale), Australian Institute of Sport Pool, Canberra Olympic Pool and Health Club, Dickson Pool, Manuka Pool, Phillip Swimming and Ice Skating Centre and the Tuggeranong Lakeside Leisure Centre. The ACT Land Development Agency is also developing a project proposal for a new sports

⁴⁵ ACT Legislative Assembly, Proof Transcript of Evidence, 31 March 2005, Standing Committee on Planning and Environment Reference: Draft variations 205, 244 and 237, p.2.

⁴⁶ ACT Legislative Assembly, Proof Transcript of Evidence, 31 March 2005, Standing Committee on Planning and Environment Reference: Draft variations 205, 244 and 237, p.1.

⁴⁷ Figures for 2003: J.A. Nicholas & Associates Pty Ltd, Belconnen Leisure and Aquatic Study, pp.66, 87.

⁴⁸ J.A. Nicholas & Associates Pty Ltd, Belconnen Leisure and Aquatic Study, p.8.

⁴⁹ ACT Government, *Urban Services Annual Report 2003–2004*, Volume 2, Canberra 2004, p.93.

complex in Gungahlin. This may include a 50-metre, 10-lane swimming pool.⁵⁰

1.41 The privately-run commercial swimming pools in the ACT include the Big Splash Waterpark in Macquarie, the Canberra International Sports and Aquatic Centre (CISAC) in Belconnen, the Kaleen Swim Centre in Kaleen and the Club Lifestyle pool in Woden. The Kings Swim Program is intending to build a pool in Macgregor, in relation to which negotiations with the ACT Planning and Land are said to be advancing well.⁵¹ Several schools in Canberra run 25 metre swimming pools. In April 2005 the Kings Swim Program was negotiating with the Marist and Bergmann Anglican schools about possible 25 metre pools at those schools in Philip and Gungahlin respectively.⁵² The Canberra Boys Grammar has a swimming pool.

1.42 A couple of privately-run swimming pools in Canberra have closed in recent years, with another likely to close in future. The Deakin Health Spa closed its 25 metre swimming pool in October 2002.⁵³ The 25 metre indoor swimming pool at the Kippax Indoor Recreation Centre closed in July 2001.⁵⁴ The Big Splash Waterpark in Macquarie may close this year.⁵⁵

Cross-subsidisation

1.43 The cross-subsidisation arrangement proposed in this draft variation, which is designed to enable the lessee to cover the operational costs of the pool, has also been adopted in relation to the Phillip Pool. Such cross-subsidisation is consistent with the policy assumption that guided the 1997 Strategic Review of Swimming Pools and Related Facilities in the ACT, that the provision of aquatic facilities should be planned in such a way that

the facilities can be efficiently managed and operated to provide maximum benefit to the community and user groups at minimum

⁵⁰ F. Cassidy, 'New competition to sink Macquarie pool', *The Canberra Times*, 25 May 2004, p.7.

⁵¹ F. Cassidy, 'New competition to sink Macquarie pool', *The Canberra Times*, 25 May 2004, p.7.

⁵² F. Cassidy, 'New competition to sink Macquarie pool', *The Canberra Times*, 25 May 2004, p.7.

⁵³ M. Doherty, 'One last lap at Prosser', 1 October 2002, p.5.

⁵⁴ Campbell Dion Pty Ltd Town Planners and Landscape Architects, Mandatory Preliminary Assessment Parkview Apartments (Blocks 50 and 51 Section 50 Holt): Liangis Investments Pty Ltd, September 2003, pp.21–23.

⁵⁵ F. Cassidy, 'New competition to sink Macquarie pool', *The Canberra Times*, 25 May 2004, p.7.

ongoing cost (if any) to ratepayers and the community in general.⁵⁶

- 1.44 The Phillip pool is government-owned but has been privately tenanted for the last decade or so, and the ice rink has long provided an income stream to help defray the maintenance costs of the pool. Because the infrastructure is ageing and in need of substantial renovation, in 2004 Draft Variation No 266 amended the Territory Plan to provide that no lease variation could be approved that would have the effect of removing the requirement for a 50 metre swimming pool to be maintained and operated on the site and made available for public access for a minimum of 5 months each year.⁵⁷ This is similar to the Oasis Leisure Centre site where there are already other income streams available from the developments on site, but apparently not enough to cover the cost of the pool refurbishment.

Performance bond

- 1.45 The Committee considered what might happen if the lessee were to be permitted to build the office block before the pool was refurbished, and then refused to refurbish the pool. This could create a risk that the ACT Government may become exposed to the cost of refurbishing the pool, or letting it close.
- 1.46 If the ACT Planning and Land Authority were to require the provision of a performance bond guaranteeing that the pool will be refurbished once the office building is finished, there would be less risk that the lessee would refuse to do the refurbishment.
- 1.47 In 2003 the ACT Auditor General inquired into the funding arrangements for the Belconnen Indoor Aquatic Leisure Centre.⁵⁸ The Auditor identified the need for flexible mechanisms in contracts and leases that would enable the Government to insist on full compliance with required standards of service. The Auditor said that a performance bond held in trust could be accessed by the Government in the event of the contractor becoming insolvent or failing to

⁵⁶ LRM Australia Pty Ltd Leisure Management Consultants, *Strategic Review of Swimming Pools and Related Facilities in the ACT, Final Report*, prepared for the ACT Bureau of Sport Recreation and Racing, March 1997, p.3.

⁵⁷ Variation 226 to the Territory Plan: Territory Plan Part B8: Entertainment, Accommodation and Leisure Land Use Policies, p.26 of Part B8.

⁵⁸ ACT Auditor General's Office, *Auditor General's Report: Belconnen Indoor Aquatic Leisure Centre, Report No. 2, 2003*, Canberra 2003.

perform its obligations.

- 1.48 The use of performance bonds is becoming increasingly common in various sectors in Australia.⁵⁹ They can be required as cash-up-front, or can be secured by the payment of risk insurance to a guarantor, or can be a bank guarantee,
- 1.49 The Auditor General recommended that the ACT Government take steps to minimise the operational risks associated with the performance of contracts by private sector organisations concerning the delivery of core public services. It recommended that such contracts should provide for payment withholding mechanisms that could be used as a sanction to motivate ongoing sound operational performance. The Auditor General recommended that contractors could be required to provide a performance bond of sufficient amount to cover any Government costs which may be incurred if the contractor fails to deliver the services at the required standard during the term of the contract. A figure of \$250 000 guarantee or performance bond had been discussed, but not included in the final contract for the Belconnen pool.⁶⁰
- 1.50 Provisions of the *Land (Planning and Environment) Act 1991* (ACT) enable the ACT Government to require compliance with a range of conditions, including the provision of a performance bond, as a condition of an approval of a development application. Paragraph 245(3)(f) of the Act provides that an approval may be made subject to a condition:
- (f) that a bond be entered into securing performance against the conditions of an approval;
- 1.51 The Act also enables regulations to be made to give effect to a performance bond condition. Paragraph 282(1)(b) provides that a regulation may make provision for—
- (b) the form and conditions of a bond mentioned in section 245 (3) (f), including the method of calculating the amount of the bond and the conditions of payment under the

⁵⁹ See Halsbury's Laws of Australia, Building Contracts – Recourse to Security, Performance bonds; D. James, Ecoservices Pty Ltd, *Environmental Incentives: Australian Experience with Economic Instruments for Environmental Management*, Environmental Economics Research Paper No 5, accessed 5 April 2005 at <http://www.deh.gov.au/pcepd/econmics/incentives/perform.html>>; Victorian Government, Minerals and Petroleum Division, *Rehabilitation Bonds for the Mining and Extractive Industries: Position Paper*, 2004; Victorian Minerals and Energy Council Inc., Submission to the Department of Natural Resources an Environment on their Discussion Paper on Rehabilitation Bonds, April 2002.

⁶⁰ ACT Auditor General's Office, *Auditor General's Report: Belconnen Indoor Aquatic Leisure Centre*, pp.7, 32–33.

bond;

- 1.52 There are also a range of other conditions specified in section 245 that can be attached to a development application, such as that that a development be carried out to the satisfaction of a specified entity; or that a development be carried out to a specified standard.
- 1.53 The requirement for such a bond or performance condition may be prudent in relation to the Oasis Leisure Centre development. Otherwise there is a risk that once the office accommodation is built and providing returns, the lessee may decline to take on the refurbishment of the pool, given its limited independent commercial viability.

Standard of facilities

- 1.54 During the Committee's consultations, several submissions expressed preferences for various upgraded facilities at the Oasis Leisure Centre. These included a heated pool for toddlers, an upgraded gym, better access for the disabled, a hydrotherapy pool, and two more lanes in a deeper (1.8m depth) 50 metre pool. These preferences are broadly consistent with the features and facilities requested during a community survey for the CISAC pool in Belconnen, where a 50 metre pool, a crèche, an outdoor area, a hydrotherapy pool, a toddlers' pool and a gym were regarded as priorities.⁶¹ As noted above, better lighting was also requested for the informal car park adjacent to the facility.
- 1.55 The provision of a hydrotherapy pool at the Oasis Leisure Centre could be very beneficial for patrons with medical needs, and would be ideally located given the proximity of hospitals in West Deakin and Woden. Hydrotherapy can increase blood flow into targeted tissues, reduce muscle spasms, tensions and pain, and increase range of motion.⁶² They can assist users with post-hospital and other rehabilitation, and recovery from back pain and sports and leisure-related physical injuries. There are also increased health risks compared with larger pools however, because of the increased water

⁶¹ J.A. Nicholas & Associates Pty Ltd, Belconnen Leisure and Aquatic Study, p.52–54.

⁶² D.L. Davis and S. Spinasanta, 'Hydrotherapy and Aquatic Therapy', accessed 24 March 2005 at <http://www.spineuniverse.com/displayarticle.php/article1489.html>; The Allen Consulting Group, Belconnen Aquatic Leisure Centre 'Public Benefit' Assessment and Feasibility Study, Volume 2—Main Report, Report for the ACT Department of Education and Community Services, March 1999, pp.49–50.

temperature and smaller amount of water.

- 1.56 The provision of enhanced facilities would be at significantly increased cost to the proponent, and such facilities could impact on the competitiveness of the CISAC facility, which now provides a 50 metre pool, hydrotherapy pool, gymnasium, indoor sports complex, sports clubs and other facilities. Mr Adams, McCann Property and Planning, told the Committee that

We believe that, to actually do a rebuild of a substantial facility with bigger and better facilities—the swim clubs want two more lanes; a hydro-pool would obviously be a benefit as there are a lot of health practices in the area and there is obviously a relationship—something like \$12 million would be required for such a facility. That would then provide a facility that would have a life of 20 years or more. Again, we have the problem that the capital is not available. We would again submit that, as has happened at Belconnen, some government assistance just in terms of a cash injection would be necessary to achieve that sort of facility.⁶³

- 1.57 It may be more economic for the proponent to upgrade current facilities if the 50 metre pool was replaced with a 25 metre pool. This would not be popular according to surveys of community preferences, however, as noted above. Kings Swim Program has expressed some interest in working with the Cypcill Pty Ltd to develop a 25 metre pool on the site essentially for learn to swim classes.⁶⁴

Access for disabled users

- 1.58 The Building Code of Australia, which is a national code implemented in the ACT through the *Building Act 2004* (ACT), prescribes access requirements which aim to ensure that persons with a disability can access buildings equitably. The ACT Planning and Land Authority (ACTPLA) also provides additional guidance in its 2003 ACT Planning Guidelines for Access and Mobility. The Committee recommends that the ACT Planning and Land Authority ensure that access to the Oasis Leisure Centre for persons with a

⁶³ ACT Legislative Assembly, Proof Transcript of Evidence, 31 March 2005, Standing Committee on Planning and Environment Reference: Draft variations 205, 244 and 237, p.3.

⁶⁴ Canberra Manager King Swim Program, C. Munn, 11 April 2005.

disability fully complies with these standards and guidelines.

Committee Recommendations

RECOMMENDATION 1

- 1.59 **The Committee recommends that the ACT Planning and Land Authority develop a Master Plan for the West Deakin area which identifies an enlarged designated office employment area and addresses 'precinct specialisation' issues, transport (including traffic, parking, public transport, and bicycle and pedestrian access), environmental issues, and retail facilities.**
- 1.60 **If resources are not available for a Master Planning process in the 2005-06 budget, these issues should be addressed in a revised DV205 or new draft variation.**

RECOMMENDATION 2

- 1.61 **The Committee recommends that the Minister for Planning request that the ACT Planning and Land Authority amend DV205 to enable the office block to be built before the Oasis pool is refurbished, but on condition that the proponent provide a performance bond to guarantee that the pool is upgraded to the satisfaction of the Authority.**

RECOMMENDATION 3

- 1.62 **The Committee recommends that the proponent be required to provide security lighting for the car park on Block 23.**

RECOMMENDATION 4

- 1.63 **The Committee recommends that the ACT Planning and Land Authority ensure that access to the Oasis Leisure Centre for persons with a disability fully complies with relevant standards and guidelines.**

Appendix 1: Current Territory Plan Policies

Block 11 Section 68 (Units Plan No. 1556) Deakin is currently subject to the Entertainment, Accommodation and Leisure Land Use Policy.

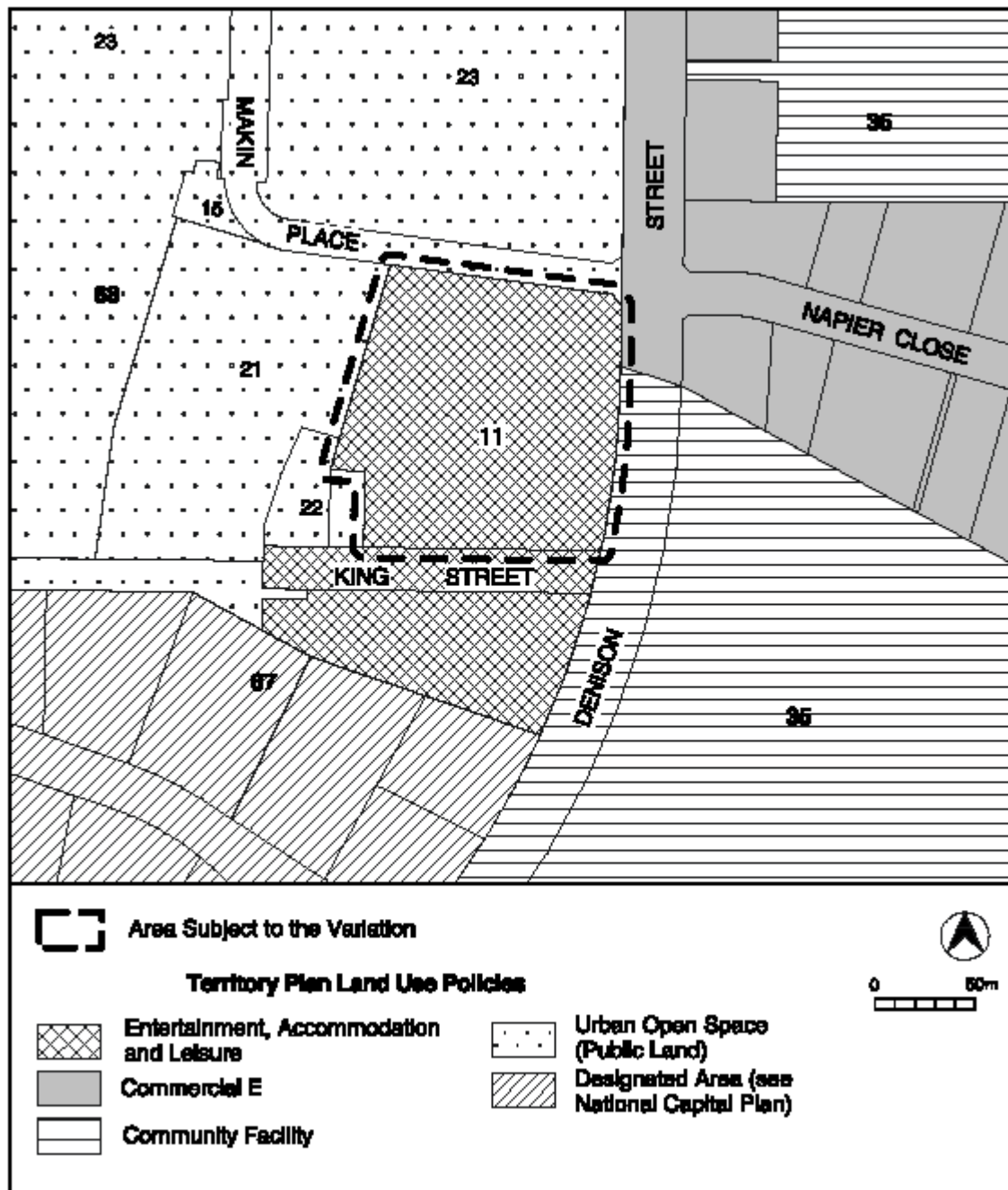


FIGURE 1: CURRENT LAND USE POLICIES

Appendix 2: Proposed Variation to the Territory Plan Map

DV205 proposes to amend the Territory Plan map by adding the 8N Area Specific Policy overlay to Block 11 Section 68 Deakin concerning the proposed office use and pool refurbishment requirements.

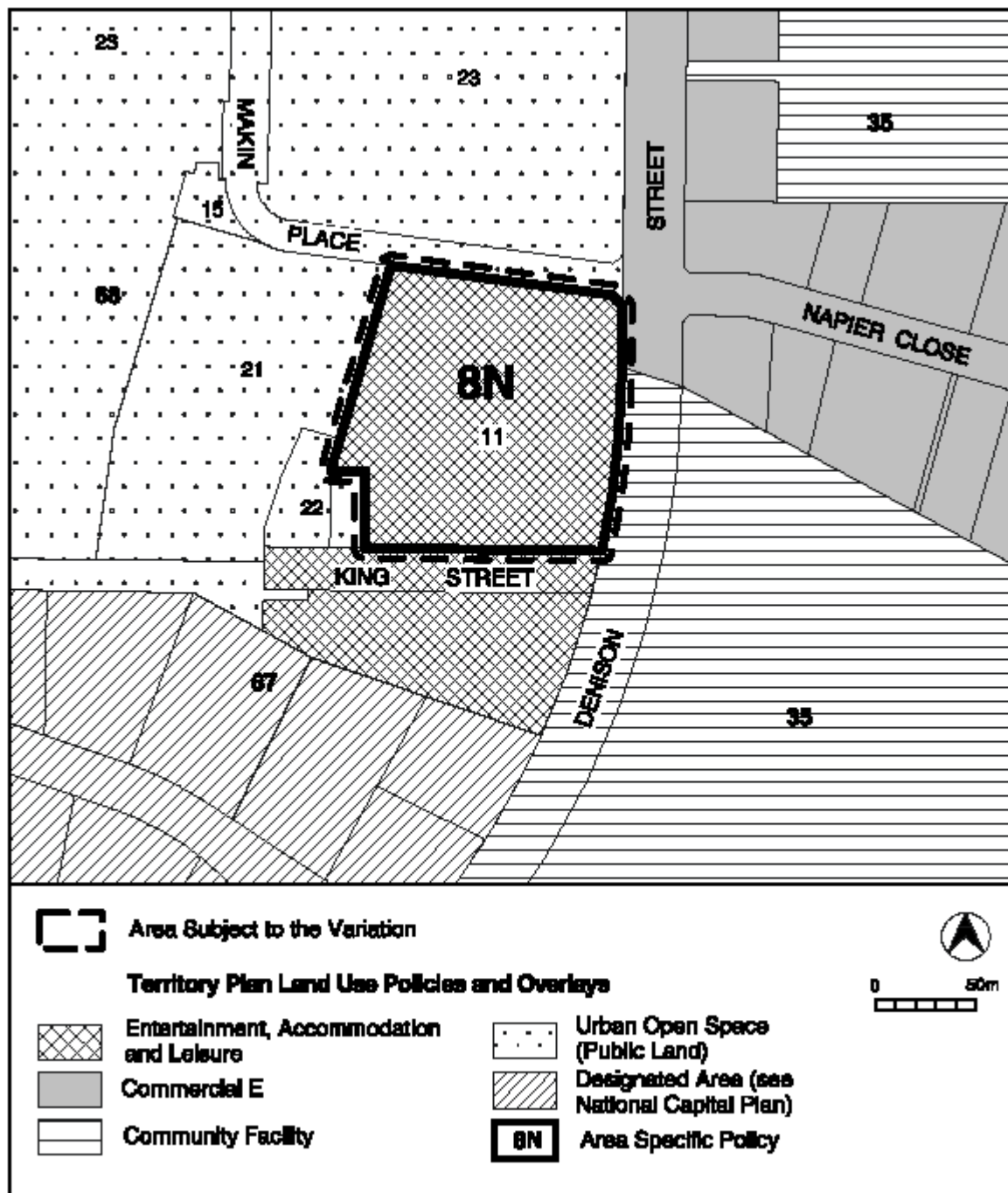


FIGURE 2: PROPOSED VARIATION TO THE TERRITORY PLAN MAP

Appendix 3: Office sites in West Deakin

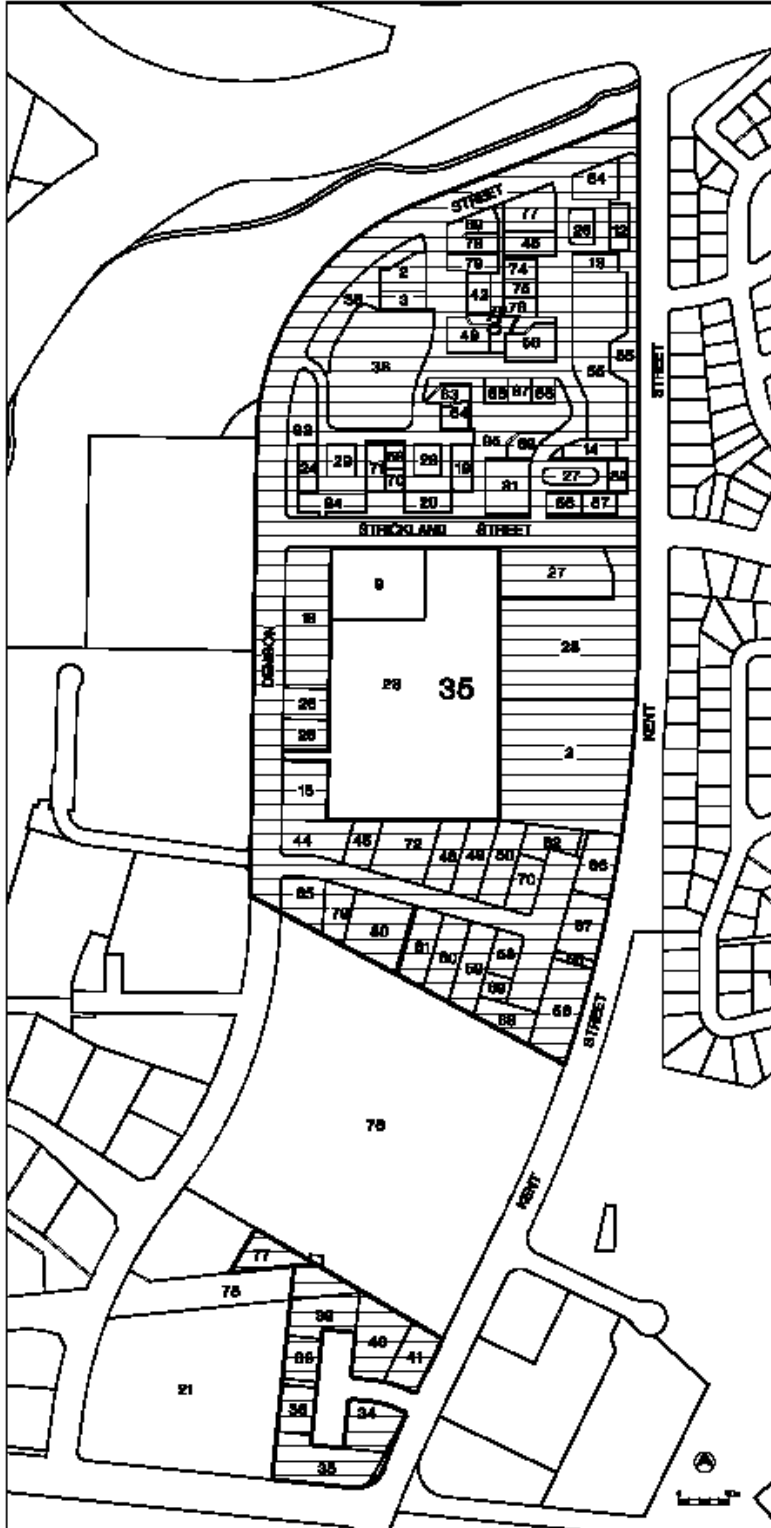


FIGURE 3: TERRITORY PLAN FIGURE 5: OFFICE SITES
- DEAKIN [V210], PART B2E TERRITORY PLAN, P.17.

Appendix 4: Swimming pools in the ACT

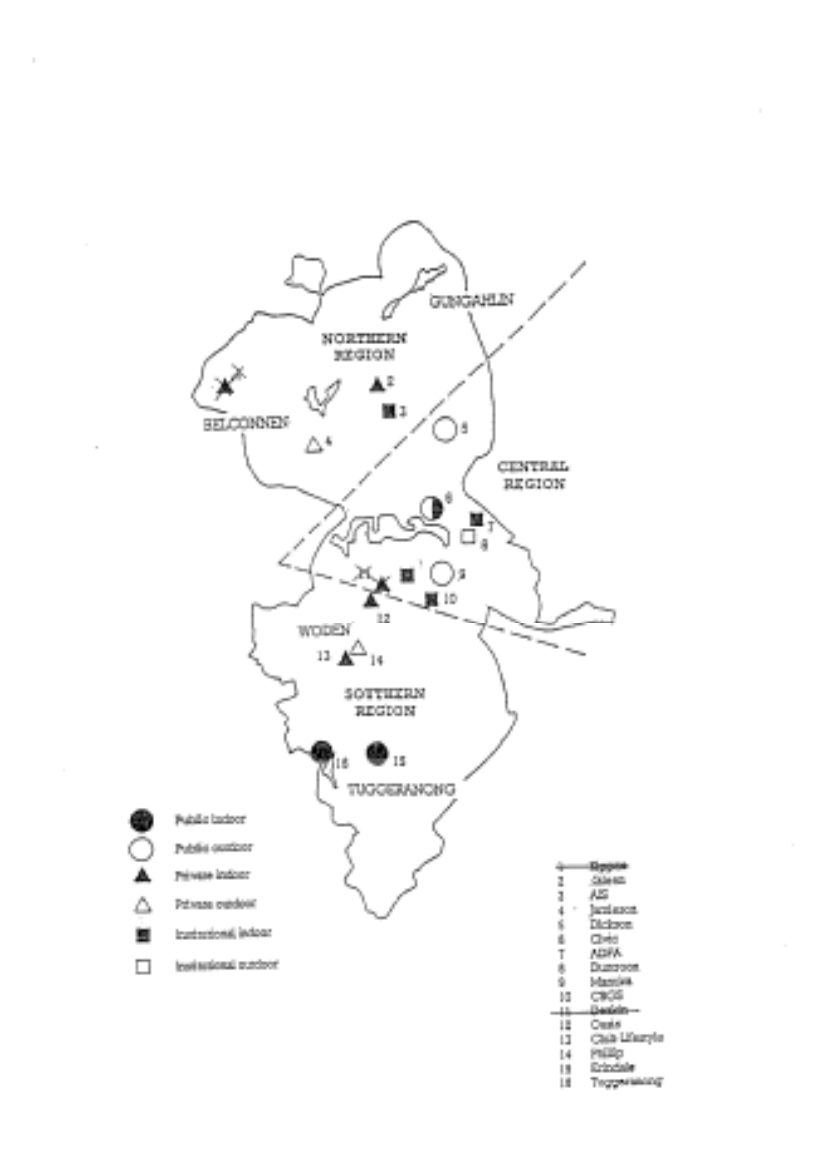


FIGURE 4: SWIMMING POOLS IN THE ACT⁶⁵

⁶⁵Map reproduced from: J.A. Nicholas & Associates Pty Ltd, Belconnen Leisure and Aquatic Study, Prepared for ACT Landscape (Total Care Industries), November 1997.

Appendix 5: List of submissions

No 1 — Mr Phil Lowen for John James Memorial Hospital

No 2 — Mr Graeme Murphy for the ACT Touch Association Inc

No 3 — Ms Di Johnstone for the Deakin Residents' Association

No 4 — Mr Alan Tebb for the Board of Directors of the Burley Griffin Swimming Club

No 5 — Mr Anthony Johnston for the Board of Directors of Deakin Swimming Ltd

No 6 — Ms Gaelle Giroult

No 7 — Michael Clifford for the Telopea Amateur Swimming Club

No 8 — Mr Tony Adams, McCann Property and Planning, on behalf of the current lessees of Unit 17 Block 11 Section 68 Deakin (the Oasis Leisure Centre site), Cypcill Pty Ltd