

05 June 2012

The Secretary
Standing/Select Committee on DV306

Dear Sir/Madam

Supplementary comments to Master Builders Association's DV306 submission of September 2011

Following the MBA's initial submission of 6th September 2011 and a number of presentations to members by ACTPLA representatives, there are a number of primary issues that are of concern to the industry regarding Draft Variation 306.

The MBA has also reviewed the Report on Consultation provided by ACTPLA and a summary of the issues raised in the submissions. It is acknowledged that a large number of the issues raised in the MBA's submission have been addressed.

The following are some of the primary issues that are of ongoing concern to our members regarding DV306:

Interim effect provisions

The MBA is of the view that, from a policy perspective, it is unsatisfactory that some of the provisions in the Draft Variation should have interim effect when it is possible that it will be withdrawn by the Minister or rejected by the Assembly. It is also peculiar that a Draft Variation has de facto force of law before any consultation has occurred or, for that matter, consideration by the Legislative Assembly. While there is no doubt that these features of the Planning and Development Act are not unlawful, it is obviously productive of some fairly perverse outcomes, due to the uncertainty arising from Draft Variations being potentially rejected by the Legislative Assembly.

One would question why the Planning and Development Act bothers to refer Draft Variations to the Legislative Assembly, when they can have an interim effect of up to two years without political intervention.

The interim effect provisions, to say the least, are causing a great deal of uncertainty in our industry with a large number of projects being shelved in R22 zones.

Solar access

This has, by far, been the most dominant issue is consultation with our members. Our members are advising us, through modelling that they have undertaken on some standard designs, essentially make it impossible to maximise GFA and return a viable building outcome for their clients. Our members are strongly recommending that the notional 1.8 solar fence principle, be reviewed.

It is also likely that DV306, if implemented in its current form, with proposed solar access provisions, will create an environment of uncertainty. It is also quite likely that a large percentage of applications that were previously dealt with through the Exempt Development process in RZ2, will now end up in Merit Track due to the difficulty of satisfying the building envelope criteria now proposed in DV306.

RZ2 and RZ3 zones

DV306 does not clearly define the outcomes that would achieve the government's objectives, either in terms of desired character of each residential zone, or the presentation of a set of rules that represent an integrated approach to built-form streetscapes and the public realm. A perfect example of this is that proposed rules being imposed in RZ2 zones will effectively deny the opportunity to create medium-density infill close to local centres.

Clarification required on the impact of existing owners' rights

There is some confusion between information contained in the Fact Sheets and requirements outlined on DV306 in the DV306 document. The Fact Sheets appear to indicate that the solar access provisions will apply to all existing blocks 500sqm or larger. If this is correct, no real consideration has been given to the impact that DV306 will have on existing owners' rights over the development of their property. It would also mean that owners now planning to add to their existing residence will have to comply with a totally new set of rules proposed under DV306.

Secondary residence

The inclusion of a secondary residence is supported, as it would provide an opportunity for elderly owners to vacate their principle residence and move into more suitable, adaptable accommodation. There has been some suggestion that a secondary residence may require a Lease Variation. The MBA believes that this would be a major disincentive and is seeking clarification on this issue.

Dwelling replacement policy

The replacement policy requiring 3-bedroom units doesn't make sensible policy and should be left to market forces. It is unlikely that families will be moving to a development with single bedroom dwellings as the likely occupants are singles. An alternative would be to encourage multiple 3-bedroom units in the same development.

Estate development code

Proposed provisions regarding integrated development is supported, as good quality desired outcomes can be achieved with an integrated approach for the whole development.

Reduced densities

Densities will decrease as the solar setbacks proposed in DV306 will decrease yields. Our members have provided us with examples of designs for Molonglo, which are providing to be very difficult and owners are disappointed that they cannot build their desired design, given the building envelope criteria being imposed by DV306.



Unsatisfactory building outcomes for owners

We have modelled some standard residential designs at Molonglo and now have also had the opportunity to view the built outcome. It is clear that the DV306 provisions have the potential to push designs towards the northern boundary, which will have a negative impact by reducing the open space on the northern side of the property. It has also been suggested that garages can be built adjacent to the boundary on zero setbacks, but can also be cut into the site to minimise the potential for over-shadowing in the adjoining block. This would, potentially, deliver a disastrous building outcome and would create major issues with surface water drainage and potential flooding. Our members are recommending that the consequences of the DV306 provisions should be carefully reviewed, given that these requirements can affect a single storey residence. The consequences are far more disastrous when a two-storey element is added and we are now seeing examples where the entire house is being lowered into the site to comply with the proposed DV306 building envelope criteria.

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