



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

(Reference: [Draft variation No 350: changes to the definition of “single dwelling block”](#))

Members:

MS C LE COUTEUR (Chair)

MS S ORR (Deputy Chair)

MR M PARTON

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 12 DECEMBER 2018

Secretary to the committee:

Ms Annemieke Jongsma (Ph: 620 51253)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Amended 20 May 2013

The committee met at 2.02 pm.

GENTLEMAN, MR MICK, Minister for the Environment and Heritage, Minister for Planning and Land Management, Minister for Police and Emergency Services and Minister assisting the Chief Minister on Advanced Technology and Space Industries

PONTON, MR BEN, Director-General, Environment, Planning and Sustainable Development Directorate

KAUCZ, MS ALIX, Senior Manager, Territory Plan Unit, Planning Policy Division, Environment, Planning and Sustainable Development Directorate

JAMALY, MS RUMANA, Manager, Residential, Estate Assessment, Planning Delivery Division, Environment, Planning and Sustainable Development Directorate

THE CHAIR: Good afternoon, everyone. Welcome to this public hearing of the Standing Committee on Planning and Urban Renewal inquiry into draft variation No 350: changes to the definition of “single dwelling block”. Today we will be hearing from the minister and directorate officials. Hansard is recording the hearing for transcription purposes. It will be webstreamed and broadcast live.

Can I draw your attention to the pink privilege statement? I am sure you have all seen it before. Can you confirm for the record that you understand the privilege implications of it?

Mr Gentleman: Yes, we do.

THE CHAIR: Great. Do you have an opening statement that you wish to make?

Mr Gentleman: Thank you, chair, and thanks for the opportunity to appear before the committee today to discuss draft variation No 350, as you said, to amend the definition of a “single dwelling block”. I have supported DV 350 on the basis that it is responding to inappropriate multi-use development, or redevelopment, occurring on certain blocks in some older Canberra suburbs.

These blocks are not covered by the definition of “single dwelling block” in the Territory Plan as they contained two dwellings, a house and a small flat when they were originally developed in the late 60s and early 1970s. As a result some of the planning restrictions on multi-unit development that apply to neighbouring blocks in the same zone do not apply to multi-unit housing redevelopment on these particular blocks. This has led to development of these areas that is contrary to the existing low-density suburban character.

Eight submissions were received during public consultation on the draft variation. The comments received included a range of issues both in support of and in opposition to aspects of the variation.

Particular comments received included concerns that future development opportunities would be restricted on affected blocks; that the changes would have a significant financial impact on lessees of affected blocks; that the proposed changes

are contrary to the policy shift to increase density in existing suburbs; that selective planning policy was driven by concerns of individuals or small groups about particular projects in their suburbs; also, that there was a lack of prior consultation on the proposed changes; that a transition period for current redevelopment projects should be allowed; and that dual occupancies in new subdivisions will be adversely affected by the new definition.

The concerns raised were carefully considered in the review of DV 350 and responded to in the report on the consultation. Changes were made to the proposed definition in the recommended draft variation in response to some of the matters that were raised.

I have in attendance with me representatives of the Environment, Planning and Sustainable Development Directorate, who will be able to assist with technical input and answer any questions you may have on DV 350. Of course, alongside my colleagues from the directorate, I will be happy to take any questions that the committee may have.

THE CHAIR: The first question is probably one of the most obvious ones: how many blocks are we talking about here? There is a different answer if it involves 10 from if it involves 10,000.

Mr Gentleman: We do not have a finite number on the number of blocks that would be affected under this.

Mr Ponton: It is challenging for us to identify the exact number. Of course, we know the time period within which these leases were granted. That gives us, certainly, an idea of where the particular provisions or the leases might occur. In terms of identifying the exact number, we would need to run through those suburbs and review each and every lease, to get a clearer picture of the exact number.

Ms Kaucz: We approximate that it is probably in the hundreds that can fall into this category across Canberra. So it is not in the tens or in the thousands. We think it is in that ballpark.

THE CHAIR: That is very interesting. Are we correct in thinking that the blocks in question are only ones that have a house and a flat development? There is nothing else that we are talking about?

Ms Kaucz: It is basically any block that had two dwellings on it. Commonly, they are the ones with the single dwelling house with the flat behind. It is technically two dwellings, but over time there could have been other variations of two dwellings on the block. There could be two next to each other, something like that. But the majority are in that category of one with a flat.

THE CHAIR: You changed your definition from the first iteration to the second. Can you talk us through the reasons why you changed it?

Ms Kaucz: Following the consultation period it was raised that, as new subdivisions are approved, often they will have a surveillance unit, or a multi-unit site on the corner of a block into a laneway or a rear lane, just for surveillance. In situations like

that, where they have two dwellings on the site, they were always allowed to have the two dwellings. It was brought to our attention that the definition had caught those ones, so they would not have been allowed to have the two dwellings. That was not the intention, so that is why we revised the wording to allow those blocks that were allowed to have two dwellings to have the two dwellings.

MS ORR: The position put to us by the MBA was that this seemed an unusual change to be occurring at the same time that housing choices was out there, and the government was looking to have a broader infill program. Can you clarify for me the response you have to that suggestion? How does this change fit within that broader agenda that the government has?

Mr Ponton: You would certainly be aware, Ms Orr, that the planning strategy was released by the minister last week. That certainly identifies the need to manage growth in a particular way. Part of the ongoing work is housing choices, so, yes, we do need to provide for housing choices.

The important thing here is that we need to manage growth in a considered manner. That is the issue here. Our concern is that, because of the nature of these leases under the current definitions, we can have proposals being submitted to the planning and land authority for assessment and that, essentially, because of—for want of a better term—the loophole, the relevant provisions in terms of managing multi-unit development do not apply. That means, in terms of things like site coverage, setbacks and the like, there is very little control that the planning authority has.

I will come back to the main point in response. It is about managing growth sensibly and respecting what we hear from the Canberra community over and over again. There are certain parts of the Canberra community that recognise that their particular locality has particular features, and that is important to them. The planning system is intended to protect that, to a large extent.

Where we are seeing these types of developments, it is within essentially the RZ1 zones. They are areas that are meant to be suburban in character. Where we want to manage growth is in centres and transport corridors, and within the existing urban area that is appropriately zoned for that type of development.

MS ORR: What are the implications for the urban amenity of these developments going ahead, if they are outside the multi-unit housing development code or they are not within the character of the area?

Mr Ponton: The first point that I would make is that, from an assessment perspective, it makes it very difficult for my team to assess the applications because the ordinary rules do not apply, which means that they need to rely very much on section 120 of the Planning and Development Act, which essentially talks about suitability of the site. If those are then appealed, that also creates other challenges in terms of arguing whether it should have been approved or refused. If we are seeking changes, it is also quite challenging.

In terms of the amenity, as I said, RZ1 zoning is about suburban development. The government has made the decision that in those zones we want to see a particular type

of development which is low scale. What we are seeing here is a standard block with five, six or seven townhouses being proposed. If you had only one of those leases and the others in the street did not have the provision, you are not going to see that uniformity develop over time which you tend to see in areas that are appropriately zoned. When you start to see an area redevelop, yes, there might be one or two developments that do not quite fit but, over time, because there are the planning provisions, you will start to see uniformity.

MS ORR: Mr Ponton, just playing devil's advocate, what is the importance of the uniformity?

Mr Ponton: Again it comes back to what it is that we are trying to achieve in particular zones. In this particular case, RZ1, it is about suburban character. That is what people are expecting. That is what the government is expecting. We are seeing the risk that you might have, sitting in the middle of all of that, something that does not meet expectations in terms of both what the government and the community are looking for.

MS ORR: Are there any practical considerations in that regard, if you suddenly have a seven-dwelling place put onto a street that has all single dwelling blocks everywhere else? Certainly, amenity is one side of it and expectations is another. What are the more practical aspects, as far as infrastructure provision and those sorts of things are concerned, in having densification in an area where it is not necessarily meant to be or is not necessarily articulated to be?

Mr Ponton: As part of the planning process, in identifying areas that are suitable for greater or increased density, a range of studies and analysis is done. If you are looking to change zoning, we would undertake an analysis of the capability of the infrastructure: water, sewer, stormwater and the like.

These areas are suburban, as I said, in character. That is the zoning. That is what is expected; so that work would not have been done in relation to the capacity. But in terms of whether that is the most significant issue, in terms of what we have been hearing from the community—and my colleagues might want to jump in at any point—the main concern that we are hearing is that RZ1 character, suburban character, is potentially being compromised.

MS ORR: Am I right in understanding, Mr Ponton, is that the way it falls at the moment, because of, to use your words, a loophole that is being applied to these areas, you have very few levers within the planning process to make sure that the outcomes that one would want to achieve are being achieved in these spots?

Mr Ponton: That is correct, yes.

MR PARTON: Mr Ponton, can I say with respect that I am astounded that you and your directorate cannot tell us how many blocks are affected by this change. This is a draft variation of the Territory Plan. We have had a consultation process. This is an inquiry into this DV. I just find it difficult to swallow that you cannot tell me actually how many blocks we are talking about. If you do not know where they are, who does?

Mr Ponton: I would not want you to be astounded. I think my colleague made it clear earlier that the estimate is in the hundreds. But in terms of an exact number, we could certainly do that. But in terms of getting that detail, we would have to go through and review all the leases.

Presumably what has happened—and Ms Kaucz may wish to elaborate—what I suspect is that we have taken a sample and extrapolated out of that sample what the total numbers might be, based on the time period for when those leases were granted. We have got an estimate. But if you are asking for the exact number then a lot more detailed work would need to be undertaken to do that. But ordinarily it is not at all uncommon, I would have thought, to take a sample and extrapolate out the numbers, which, as has been mentioned earlier, is in several hundreds.

MR PARTON: Can I get the minister or someone else to talk us through why DV 350 was announced with interim effect? What is the reasoning for that? Why did we go down that path?

Mr Gentleman: It is really to ensure that we have in place a planning control that ensures that those people who might be considering doing this in the future are aware of the change in planning so that we can do this straight away and ensure that we have the right controls for RZ1, to ensure that we have the amenity and original purpose for RZ1 that the community expects us to uphold. We have seen, as you heard, a number of these slip through, if you like, a loophole that was not expected previously and we have had to change the Territory Plan to ensure that that does not occur in the future.

MR PARTON: Would you concede that the interim effect provisions of this draft variation may well have had serious financial implications on individuals and companies who were genuinely planning to develop blocks under the old guidelines?

Mr Gentleman: We have certainly seen that, I think, in some of the comments made on the variation during the consultation process. But it is important, I think, that we send a message of what the community expects to see in planning regulation in the territory.

MR PARTON: What I am hearing from you is that your message to those people is, “It is not your fault, but tough luck. The law is changed from this date and you have missed out.”

Mr Gentleman: As I said, the controls are changing because that is what the community expects to see in their residential RZ1 zones. It was not expected that these particular developments would go ahead when the Territory Plan was drawn up. This is where you have two residences, if you like, on a single block and they are now morphing into perhaps up to seven residences on a single RZ1 block.

Mr Ponton: If I could just add, the Legislative Assembly has passed the legislation that provides for the minister to apply interim effect to particular variations. It is not always used. Presumably the Assembly did so in expectation that there would be times when it is important, because of the nature of potential changes or developments that are occurring, to make an immediate effect.

MR PARTON: I have got correspondence here which I am assuming actually went in as a part of the consultation. I am not going to mention which block it refers to but it basically says here that the lessee purchased the site on 10 May 2018 with the understanding and expectation that the approved lease variation development application to permit 12 units on the site, as per the information submitted with that application, would be able to be progressed.

The lease variation was accompanied with a concept design that demonstrated that 12 units could be positioned on the site within a plot ratio of 65 per cent. This was able to be considered at the time of this application. He understands that this is no longer the case. The changes in DV 350 reduce this opportunity to 50 per cent plot ratio and limit the unit yield and he goes on to say that this results in this project no longer being viable, with a direct and significant financial loss and hardship for the proponent.

I do not know. Irrespective of community views and irrespective of DV 350 as a lasting concept—I am really focusing on the interim effect scenario—does that strike you as being a little unfair?

Mr Gentleman: We do not take these decisions lightly, and you would not make a comment irrespective of community views. This is why we are having this hearing right now. The community wants to have their input into planning for the future of Canberra. And this is why most of our planning—indeed, almost all of it—has a community input to ensure that we have the views of the community as we move forward.

Mr Ponton: If I could just add, in that example you mentioned the lease was varied—is that correct?

MR PARTON: Yes.

Mr Ponton: If the lease was varied then—correct me if I am wrong, Ms Jamaly—my understanding is that the applicant could apply for a development that is consistent with the crown lease. And that is understanding the hierarchy in terms of the planning provisions, the legislation and the lease. That is correct, is it not? I will ask Ms Jamaly, who went through the Territory Plan on a daily basis, to just clarify if I said anything that was incorrect.

Ms Jamaly: If the lease had been varied it would have been based on some sort of supporting document where they would have to provide a design and siting, how 12 dwellings would fit on the block. If there was supporting documentation it may have been based on that, the lease variation component. I am not aware of which DA it is but I can find out whether the design and siting application was separate to the lease variation or whether it was a combined application consisting of both the lease variation plus the design and siting.

Mr Ponton: But importantly—and correct me if I am wrong, Ms Jamaly—if the lease was varied, my understanding is then: if the design siting has not yet been applied for, that can still occur?

Ms Jamaly: Yes.

MR PARTON: I might give that advice back to these people.

THE CHAIR: One of our more interesting submissions is from Mr Peter Young. I assume that you heard his evidence that it should be “one or”, rather than “one”. Have you got any issues with his evidence, which seemed very persuasive?

Mr Gentleman: I have taken some advice from the directorate in regard to this. Ms Kaucz will give you the update on that but it appears that he could be correct in—

THE CHAIR: That is what we thought as well.

Mr Gentleman: maybe not in his terminology but it might need to take some effect there.

Ms Kaucz: With what Mr Young had suggested, we agreed with what he was saying. Yes, we just make sure that it is consistent with the terminology we generally use in the Territory Plan. But yes, it was a good suggestion for us.

Mr Gentleman: And that is why what we hear from the community on planning matters is very important.

THE CHAIR: I am sure he will be delighted to hear from you. The MBA submission gave an example from Aranda of the possible impacts the variation had. There has also been a bit of discussion about whether or not the Aranda example was in fact a typical example insofar as, given its location with respect to the shops, it almost certainly was in fact intended to be multi-unit. Do you have any comments on that? Was the MBA’s example reasonable?

Ms Kaucz: I suppose, as a bit of background on why we have the differentiation between what we are calling a standard block and a non-standard block, often in suburbs you get near the shops those multi-unit developments that occur. And when the provisions were developed to apply to a single dwelling block, a standard block—they had the zoning of RZ1 or now RZ2—the intention was for the plot ratio and other controls not to apply to those sorts of sites. That is the reason, I suppose, why we distinguish between the two. It is just that some of these blocks have then fallen into dual occupancy blocks and there is a bit of a loophole in that.

I am not familiar with the Aranda blocks. As far as I understood, what they were saying was that there was a duplex but they were on the same block?

Mr Ponton: And my understanding is that the delegate of the Planning and Land Authority considered the provisions in the multi-unit housing code to understand now what a reasonable approach to redevelopment of that scale is and determined that it would not have otherwise complied with the multi-unit housing development code. Therefore, they are using that as a guide as to what is reasonable development. It came down to what was being proposed for that particular site.

THE CHAIR: I am probably slightly verballing you but, basically, because it was

next to the shops and it clearly was always thought it could be multi-unit, you said, “Okay, this is the multi-unit code. Your proposal does not even fit the multi-unit code. We don’t have to go any further than that. It is too high.”

Mr Ponton: Correct.

MS ORR: Mr Ponton, is it correct, then, to understand that, in making these changes, what it is doing is actually making everyone subject to the same planning rules? Am I right in understanding that?

Mr Ponton: Yes. And it comes back to my earlier point about making sure that we manage growth appropriately.

THE CHAIR: We asked MBA about how many people were going to be affected. There were two people speaking there, one for the MBA, the other for town planning. They both talked about four or five possible people who had things in train. They were not sure. There may be some overlaps. I am not sure of the exact number but somewhere between four and 10.

I suppose a relevant question is, and Mr Parton may have more to say about this with transitional arrangements: would it be administratively possible to organise some sort of transitional arrangement for the people who are currently working on it and, if it was possible, would it be desirable, from your point of view?

Mr Ponton: The answer to the first part of your question is yes, and the answer to the second part is “unlikely”.

THE CHAIR: Would you like to expand on your answer, Mr Ponton?

Mr Ponton: It comes back to the reason why interim effect was applied in that. I suspect those proposals being developed for those four or five developments are in locations that are suburban in character and are being designed in a way that do not necessarily comply with the multi-unit housing code. Therefore we would end up potentially with developments being approved that do not meet community expectations, and, for that matter, do not meet government expectations, in that they do not comply with the multi-unit housing code. Yes, it is possible to apply transitional arrangements, but sometimes a hard decision needs to be made as to what is the outcome that we are looking for in our city.

MR PARTON: In regard to that last answer—it is probably more a question for the minister than for Mr Ponton—I hear this narrative about drawing a line in the sand and saying, “This is the change that we’re making and we’re making it now.” Does the minister concede that there will be a serious effect on a small number of proponents and that, despite the fact that we are calling this a loophole in planning, with those proponents, whether they be individuals or companies, it is highly possible and likely that they have purchased in good faith on the understanding that they could develop something along the lines of the guidelines that were in place when they purchased, and now they cannot do it? None of that was their fault. They were not doing anything outside the guidelines. They were operating well and truly within those guidelines and now they cannot. It is not their fault.

Mr Gentleman: It might be best to answer that by turning it around and saying that, for the other 5,000 residential blocks within that neighbourhood that are in RZ1, they purchased there with the view that this residential amenity would stay there, as RZ1. That is why I made my purchase. I may have changed my mind if I thought that a multi-unit development could go up where there were two previous residential units on the one block.

That is why I think it is really important that we take on board the community concerns on these matters and ensure that if there are, as you have just said, loopholes in the Territory Plan, those loopholes are repaired, so that the Canberra community can have confidence in the planning system and, of course, in the independent advice from the planning authority.

MR PARTON: Why is it important in these instances but it is not important, for argument's sake, for the people of Weston Creek, who are close to the old AFP site and who purchased not believing that an RZ5 would spring up next to them? That will, from their perspective, dramatically change the character and the vibe of their suburb. Why is it important for these individuals that you speak of but not important for them?

Mr Gentleman: No, it is important for all Canberrans, certainly, to be able to have a say in the planning system for the future of Canberra. The system needs to take into account the people who are here now that have purchased for those original purposes and those who will purchase in the future as well. Of course, that is why many of these planning opportunities are open for public consultation and that changes occur where the community feels changes are needed.

Mr Ponton: I think the example that you have referred to is somewhat different. On one hand we have an existing neighbourhood character: RZ1 zoning. The zoning has objectives. It talks about the particular character. The other is an area of land that has gone or is going through a proposal to vary the zoning for the neighbourhood. It will undergo precinct planning and it will go through or has gone through an extensive community engagement process. So there is a difference there.

MS ORR: I am getting confused by Mr Parton's line of questioning. Mr Parton is referring to blocks that have been purchased under a certain set of guidelines and why that cannot continue under those guidelines. Mr Ponton, in answer to one of my earlier lines of questioning, you said that essentially there were no guidelines for these blocks.

Mr Ponton: I was going to make that point, yes.

MS ORR: Can you please clarify it for me? We talk about guidelines, but my understanding is that there are no guidelines for these blocks.

Mr Ponton: That is the issue here. The provisions that would ordinarily apply to that type of development do not apply in this circumstance, and that is the issue.

MR PARTON: In the Northern Territory, my understanding is that there is still a bunch of roads which have no speed limit. Isn't this like changing the speed limit on

that road while there are cars on it; then, when some cars get to the end of it, saying, “Hang on a second. While you were driving on that road, we changed the speed limit to 100 and you’ve exceeded the speed limit, so we’re going to ping you”?

Mr Gentleman: I always like a motoring analogy, but I do not think it fits in this case.

Mr Ponton: I would have thought that we would have—as we have done—put the sign up immediately in front of the driver. We would not have waited until they got to the end, which is what has occurred here.

MR PARTON: What would the government lose if it chose to give a grace period to those who could display that, prior to the announcement of this draft variation, they had progressed to a certain stage in a development process? What would the government lose by granting them a concession to continue?

Mr Gentleman: It is not what the government would lose; it is what the community expects us to do: take a position on their behalf to ensure that they have the suburban amenity that they expect in those areas. I think it is hypothetical to say that the government would lose anything. Certainly, if we are to ensure that the Territory Plan is effective and that the community sees what they expect to see in the Territory Plan and in those residential zones, that is very important to us as a government.

MR PARTON: There are a number of different ways that I can ask those questions, but I have probably already asked them enough.

THE CHAIR: In that case, thank you all very much. That concludes the committee’s public hearing for today. On behalf of the committee, I want to thank you for attending the hearing today. I do not think there were any questions taken on notice. We will send you a copy of the proof transcript, for any corrections, as per standard arrangements. Thank you all very much. Happy Christmas, and the hearing is now adjourned.

Hearing adjourned at 2.35 pm.