



ACT
 Government
 Environment and Planning

Director-General Correspondence Clearance form

SUBJECT	Friends of Hawker Village
CORRESPONDENT	[REDACTED]
OBJECTIVE NUMBER	16/16780

	Signature:	Date:
Director General		
Deputy Director-General		
Executive Director	[REDACTED]	22/9/16
Contact Officer: George Cilliers	Telephone No: 6207 6804	
Division: Planning Delivery		

Further Action/Comment:

.....

.....

.....

.....

Signature:

From: [EPSD Government Services](#)
To: [Ponton, Ben](#); [Phillips, Brett](#); [Rutledge, Geoffrey](#); [Simmons, Craig](#); [Walker, IanS](#); [Iglesias, Daniel](#); [Elton, Jaime](#); [Le, Thao](#); [O'Neill, Carolyn](#); [Fitzgerald, Bruce](#); [McGlynn, Gene](#); [Harding, Daniel](#); [Wilden, Karen](#); [Cusack, Kathy](#); [Power, Gary](#); [Cilliers, George](#); [Ridsdale, Janine](#)
Cc: [Marcantonio, Laura](#); [Ives, Kieran](#); [Taylor, Karen](#); [Vest, Petra](#); [Kelly, Shauna](#); [Tolson, Joanne](#); [Buckley, Jackelyn](#); [Edgar, Olivia](#); [Croke, Isabella](#); [Mileski, Rachael](#); [KalebDumic, Leanne](#); [Morton, Stacey](#); [Piper, Mayumi](#); [Virtue, Geoff](#); [McDonald, Helen](#); [Marshall, Guenivere](#); [Mills, Ann](#); [Groom, Samantha](#); [Price, Ruth](#); [EPSDLegalServices](#); [EPSD Government Services](#)
Subject: Due 3pm 11/4 - Exposure comments to 19/111 19/06049 - Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Changes to definition of "single dwelling block"
Date: Friday, 5 April 2019 9:06:20 AM
Attachments: [image001.png](#)
[image002.png](#)
[02. Exposure Draft Documentation.obr](#)
Importance: High

UNCLASSIFIED Sensitive: Cabinet

SENSITIVE: CABINET

Dear all

This EPSDD submission is currently undertaking Exposure Draft circulation. If you have comments please provide them directly to Janine Ridsdale on ext. 54060 by no later than **3pm Thursday 11 April 2019.**

If you would like any additional staff to view this item, please reply to this email to request access.

Regards

Cara

Cara Weekes | Government Services Officer - Government Services

Phone: 02 6207 8449 | Email: cara.weekes@act.gov.au

Engagement and Executive Support | Environment, Planning and Sustainable Development Directorate | **ACT**

Government

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Sensitive: Cabinet

Cabinet Coversheet

MINISTER	Minister for Planning and Land Management - Mick Gentleman MLA
SUBJECT	Exposure draft of Cabinet item 'GOVERNMENT RESPONSE TO STANDING COMMITTEE PUR REPORT NO 7 – DRAFT VARIATION TO THE TERRITORY PLAN NO 350: CHANGES TO THE DEFINITION OF 'SINGLE DWELLING BLOCK'
OBJECTIVE NUMBER	19/06049
CABINET NUMBER	19/111
CABINET DATE	Tuesday, 28 May 2019
LODGEMENT DATE*	Thursday, 18 April 2019

	Due date: (as per Cabinet timeline)	Signature:	Date:
Due to Minister's Office	05/04/2019		
Director-General			
Deputy Director-General		G Rutledge	2/04/2019
Cabinet Liaison Officer		P Bogiatzis	1/04/2019
Executive Director		Kathy Cusack	28/03/2019
Legal Services Team**			
Communications Team**			
Finance Team**			
Division: PLANNING LAND AND BUILDING POLICY			
Contact Officer: ALIX KAUCZ		Telephone No: 6205 0864	

<p>Further Action/Comment:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Signature:</p>

** Exposure circulation = 4 weeks prior to Cabinet / Final lodgement = 10am, one week prior to Cabinet*

***Contact Officer - please list your consultation contact on this coversheet prior to provision to CLO*



MINISTERIAL BRIEF

To: Minister for Planning and Land Management

Tracking No.: 19/06049
Cabinet No.: 19/111
Rec'd Minister's Office .../.../...

From: Executive Director, Planning, Land and Building Policy

Subject: Exposure Draft Lodgement of 'Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of 'single dwelling block' '

Critical Date: 18 April 2019

Critical Reason: The Cabinet Submission must be lodged with Cabinet Office by no later than 10:00am on 18 April 2019 for exposure draft circulation.

- DG .../.../...
- DDG, Land Strategy and Environment .../.../...

Purpose

To seek approval to lodge the submission at Attachment 1 for exposure draft circulation.

Recommendations

1. That you **agree** to lodge the Cabinet Submission and associated documents for exposure draft circulation.

Agreed / Not Agreed / Please Discuss

Mick Gentleman MLA/...../.....

Minister's Office Feedback

Empty box for Minister's Office Feedback

Background

1. This brief provides the Government Response (the Response – Attachment B) to the Standing Committee on Planning and Urban Renewal (the Committee) Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of ‘single dwelling. The Committee tabled the Report in the Legislative Assembly on 21 February 2019.
2. The Response agrees with the recommendations contained in the Report including that amendments will be required to the final variation for the proposed definition of ‘standard block’ to rectify drafting errors.
3. Standing Order 254A states that a response is to be provided to the Chair of the Committee within four months of the presentation of the report, which will be 20 June 2019; or provided to the Speaker for out of session circulation to members and tabled by the Minister on the next sitting day.

Issues

4. The Committee made a total of three recommendations in the Report. It is proposed that the Government agrees with all three recommendations.
5. Mr Parton MLA provided Dissenting Comments relating to Recommendation 3. Mr Parton believes the Committee should support reinstatement of a previous version of Recommendation 3 that was proposed in a draft version of the Report which recommended that the ACT Government consider amending section 72 of the *Planning and Development Act 2007* to provide for transitional arrangements during interim effect.
6. It is recommended the Government not agree with this alternate Recommendation 3 as proposed by Mr Parton as delaying the application of interim effect would potentially have enabled more inappropriate multi-unit redevelopment of the affected blocks to occur in the residential RZ1 and RZ2 zones.

Financial Implications

7. There are no budget implications as complying with Cabinet requirements will be met through base funding.

ConsultationInternal

8. The draft variation process for DV350 involved internal consultation with other areas within EPSDD including the leasing and development assessment teams of the Planning Delivery Division.

Cross Directorate

9. The draft variation process for DV350 involved cross-directorate consultation, including mandatory consultation with the Conservator of Flora and Fauna, the Environment Protection Authority and the ACT Heritage Council. No issues were raised by these agencies.

External

10. The draft variation process for DV350 involved mandatory consultation with the National Capital Authority (NCA). The NCA had no comments on the proposed changes.
11. Public consultation on DV350 was conducted for the required statutory 30 working-day period and further consultation was undertaken by the Committee as part of its inquiry into DV 350.

Benefits/Sensitivities

12. The changes proposed in DV350 reinforce the planning intent for the blocks subject to the revised definition of 'standard block' to ensure that these blocks comply with the same provisions in the Territory Plan as the neighbouring blocks in the residential RZ1 and RZ2 zones.
13. There are sensitivities around the interim effect of DV350 as there was no transitional period provided for proponents who were preparing development applications to redevelop blocks that would be impacted by the revised definition. However this was deemed necessary as delaying the application of interim effect would have enabled more inappropriate multi-unit redevelopment of the affected blocks to occur in the residential RZ1 and RZ2 zones.

Media Implications

14. A media release is not considered necessary at this stage of the process.

Summary of Attachments

1 – Cabinet Submission

- A – Standing Committee on Planning and Urban Renewal Report No. 7
- B – Government Response to Standing Committee on Planning and Urban Renewal Report No. 7
- C – Minister's Tabling Statement
- D – Triple bottom Line summary
- E – Open Access Assessment – Decision Summary

Signatory Name:	Alix Kaucz, Senior Manager	Phone:	X50864
	Territory Plan Section		
Action Officer:	Janine Ridsdale	Phone:	X54060

DRAFT VARIATION TO THE TERRITORY PLAN NO. 350: CHANGES
TO DEFINITION OF 'SINGLE DWELLING BLOCK'

STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL

FEBRUARY 2019

REPORT 7

THE COMMITTEE

COMMITTEE MEMBERSHIP

Ms Caroline Le Couteur MLA	Chair
Ms Suzanne Orr MLA	Deputy Chair
Mr Mark Parton MLA	

SECRETARIAT

Ms Annemieke Jongsma	Secretary
Ms Lydia Chung	Administrative Assistant

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RESOLUTION OF APPOINTMENT

On 13 December 2016 the Legislative Assembly for the ACT, when it created Standing Committees for the Ninth Assembly, resolved at Part 1(f) of the Resolution that there would be a:

Standing Committee on Planning and Urban Renewal to examine matters relating to planning, land management, the planning process, amendments to the Territory Plan, consultation requirements, design and sustainability outcomes including energy performance and policy matters to support a range of housing options.¹

On the same day, the Legislative Assembly also resolved at Part 3 of the Resolution that:

If the Assembly is not sitting when the Standing Committee on Planning and Urban Renewal has completed consideration of a report on draft plan variations referred pursuant to section 73 of the Planning and Development Act 2007 or draft plans of management referred pursuant to section 326 of the Planning and Development Act 2007 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.²

TERMS OF REFERENCE

In relation to a draft plan variation to the Territory Plan, section 73 (2) of the Planning and Development Act 2007 states:

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate Committee of the Legislative Assembly together with a request that the Committee report on the draft plan variation to the Legislative Assembly.

The Minister for Planning, Mr Mick Gentleman MLA, referred Draft Variation No 350: Changes to the definition of 'single dwelling block' to the Standing Committee on Planning and Urban Renewal on 11 September 2018.

¹ Legislative for the ACT, *Debates*, 13 December 2016, *Proof Transcript of Evidence*, 10 March 2017, p., 40.

² Legislative for the ACT, *Debates*, 13 December 2016, *Proof Transcript of Evidence*, 10 March 2017, p., 41.

ACRONYMS

ACT	Australian Capital Territory
DV	Draft Variation
EPSDD	Environment, Planning and Sustainable Directorate
FoHV	Friends of Hawker Village Inc.
HIA	Housing Industry Association
MBA	Master Builders Association
MLA	Member of the Legislative Assembly
MUHDC	Multi Unit Housing Development Code

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RECOMMENDATIONS

RECOMMENDATION 1

- 3.20 The Committee recommends that, subject to the following recommendations, Draft Variation 350: Changes to the definition of a 'single dwelling block' be approved.

RECOMMENDATION 2

- 3.21 The Committee recommends that the Environment, Planning and Sustainable Development Directorate consider a review of references to the *Planning and Development Act 2007* in Draft Variation 350: Changes to the definition of a 'single dwelling block' and in future draft variations.

RECOMMENDATION 3

- 4.45 The Committee recommends that the ACT Government reword the proposed definition of a '*standard block*' so that drafting errors are corrected.

INTRODUCTION

CONDUCT OF THE INQUIRY

- 1.1 On 11 September 2018, pursuant to section 73 of the *Planning and Development Act 2007* (the Act), the Minister for Planning and Land Management, Mr Mick Gentleman MLA, referred Draft Variation No 350: Changes to the definition of 'single dwelling block' to the Standing Committee on Planning and Urban Renewal (the Committee) for consideration and report to the Legislative Assembly (the Assembly).
- 1.2 The Committee released a media release announcing the inquiry on 27 September 2018 as well directly emailing those who had provided submissions to the public consultation process and others who may be affected by the draft variation. The Committee received four submissions and a list of these is provided at Appendix B.
- 1.3 The Committee held two public hearings and heard from 10 witnesses. A list of witnesses who appeared before the Committee is provided at Appendix A. The transcripts of proceedings are accessible at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-planning-and-urban-renewal/draft-variation-no-350-changes-to-the-definition-of-single-dwelling-block>

ACKNOWLEDGMENTS

- 1.4 The Committee would like to thank the Minister for Planning and Land Management and officials from the Environment, Planning and Sustainable Development Directorate (the Directorate) for their time appearing before the Committee and responding to its questions.
- 1.5 The Committee would like to extend its thanks to those who took the time to make written submissions and to those witnesses who appeared before the Committee.

2 PLANNING IN THE AUSTRALIAN CAPITAL TERRITORY

INTRODUCTION

- 2.1 This chapter outlines the planning framework in the Australian Capital Territory (ACT) and briefly outlines the evolution of the Territory Plan from its inception, through a series of reviews and restructures.
- 2.2 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cth) sets out the overarching legal framework for the planning of, and management of the land in, the Australian Capital Territory.³ It establishes the National Capital Authority, one of the functions of which is to prepare and administer a National Capital Plan.⁴ The objective of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.⁵
- 2.3 The *Australian Capital Territory (Planning and Land Management) Act 1988* also provided for the ACT Legislative Assembly to make laws to establish a Territory planning authority, and to confer on that authority the function of preparing and administering a Territory Plan.⁶ These requirements were incorporated into the *Interim Planning Act 1990* (ACT)⁷ and subsequently, with expanded environmental assessment and heritage provisions, into the *Land (Planning and Environment) Act 1991* (ACT).⁸
- 2.4 In 2008, as part of the reform of the ACT planning system, the *Land (Planning and Environment) Act 1991* was replaced by the *Planning and Development Act 2007* (the Act)⁹, which includes the provision for the Planning and Land Authority,¹⁰ and the Territory Plan.¹¹
- 2.5 The Territory Plan commenced operation on 31 March 2008 and provides the policy framework for the administration of planning in the ACT:

The object of the territory plan is to ensure, in a manner not inconsistent with the national capital plan, the planning and development of the ACT provide the people of

³ Accessible at <https://www.legislation.gov.au/Details/C2016C00482>.

⁴ *Australian Capital Territory (Planning and Land Management) Act 1988*, sections 5 and 6.

⁵ *Australian Capital Territory (Planning and Land Management) Act 1988*, section 9.

⁶ *Australian Capital Territory (Planning and Land Management) Act 1988*, section 25.

⁷ Accessible at <http://www.legislation.act.gov.au/a/1990-59/default.asp>.

⁸ Accessible at <http://www.legislation.act.gov.au/a/1991-100/default.asp>.

⁹ Accessible at <http://www.legislation.act.gov.au/a/2007-24/current/pdf/2007-24.pdf>.

¹⁰ *Planning and Development Act 2007*, section 10.

¹¹ *Planning and Development Act 2007*, section 46.

the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.¹²

2.6 Under section 50 of the Act, the:

Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan.¹³

2.7 The Act requires the Territory Plan to set out the planning principles and policies for effecting its objective in a way that gives effect to sustainability principles, including policies that contribute to achieving a healthy environment in the ACT.¹⁴

2.8 The Territory Plan includes:

- a statement of strategic directions;
- a map;
- objectives and development tables applying to each zone;
- a series of general, development and precinct codes; and
- structure plans and concept plans for the development of future urban areas.

2.9 The Territory Plan graphically represents the applicable land use zones under the following categories:

- Residential;
- Commercial;
- Industrial;
- Community Facility;
- Parks and Recreation;
- Transport and Services; and
- Non-Urban.¹⁵

2.10 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, which are prepared by the Planning and Land Authority, currently under the auspices of the Directorate, for stakeholder consultation and comment.¹⁶

¹² *Planning and Development Act 2007*, section 48.

¹³ *Planning and Development Act 2007*, section 50.

¹⁴ *Planning and Development Act 2007*, section 49.

¹⁵ Territory Plan, accessible at <https://www.legislation.act.gov.au/ni/2008-27/Current>.

¹⁶ *Planning and Development Act 2007*, Part 5.3.

- 2.11 Under the Act the Minister must refer a draft plan variation documents, within 5 working days of the notification of the public availability notice,¹⁷ to an appropriate committee of the ACT Legislative Assembly (the Assembly) for consideration and reporting.¹⁸
- 2.12 The Minister must not take action in relation to the draft plan variation until the committee of the Assembly has reported on it;¹⁹ has decided not to report on it;²⁰ has not informed the minister within 20 working days of the referral as to whether it will prepare a report;²¹ or the committee of the Assembly has not reported on the draft plan variation by the end of the period of six months starting the day after the day on which it was referred to the committee.²²
- 2.13 The Minister must take any recommendation of the committee into account before making his decision in relation to the draft plan variation.²³ If the Minister approves it, the proposed plan variation and associated documents will be presented to the Assembly.²⁴ Unless wholly or partially rejected by the Assembly, on a motion for which notice has been given within five sitting days of the plan variation being presented to the Assembly, the plan variation will commence on the date nominated by the Minister.²⁵

¹⁷ Under section 70 of the *Planning and Development Act 2007*, the planning and land authority must prepare a public availability notice advising that draft variation documents, which have been provided to the minister, are available for public inspection. This notice, which is a notifiable instrument, may be accessed via the ACT Legislation Register website at <http://www.legislation.act.gov.au/>.

¹⁸ *Planning and Development Act 2007*, section 73; The Standing Committee on Planning and Urban Renewal is currently the appropriate committee.

¹⁹ *Planning and Development Act 2007*, section 74.

²⁰ *Planning and Development Act 2007*, section 73A.

²¹ *Planning and Development Act 2007*, section 73.

²² *Planning and Development Act 2007*, section 75.

²³ *Planning and Development Act 2007*, subsection 76(3).

²⁴ *Planning and Development Act 2007*, section 79.

²⁵ *Planning and Development Act 2007*, section 83.

3 THE DRAFT VARIATION

- 3.1 The Draft Variation to the Territory Plan No 350: Changes to the definition of 'single dwelling block' (DV350) seeks to vary the Territory Plan definition for a 'single dwelling block' which currently states that such a block is:
- a block with one of the following characteristics –
 - a) originally leased or used for the purpose of single dwelling housing
 - b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of single dwelling housing.²⁶
- 3.2 DV350 proposes to change the title of the definition from 'single dwelling block' to 'standard block' and to changing the wording in the definition to include blocks that were originally leased or used for the purpose of one or two dwellings (or where there has been consolidation of blocks, that at least one of the blocks was originally leased or used for the purpose of one or two dwellings).²⁷
- 3.3 These changes will mean that proposals for development of these blocks will now need to adhere to the Multi Unit Housing Development Code (MUHDC) and will need to ensure that the built form is 'appropriate and complementary to the streetscape'.²⁸
- 3.4 DV350 seeks to make the following change to the Territory Plan Written Statement:
- Omit
- All references to '*single dwelling block*' and '*single dwelling blocks*' in the Territory Plan
- Replace with
- '*standard block*' and '*standard blocks*' respectively.²⁹
- 3.5 DV350 also seeks to make the following change to the Territory Plan Definition of Terms:
- Substitute
- 'Single dwelling block'** definition with new **'Standard block'** definition as follows:
- Standard block** means a block with one of the following characteristics –

²⁶ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 1
https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

²⁷ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 3
https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

²⁸ Draft Variation 350 Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 3
https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

²⁹ Draft Variation 350 Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 7
https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

- a) originally leased or used for the purpose of one *dwelling*
 - b) originally leased or used for the purpose of two *dwellings* on or before 18 October 1993
 - c) created by a *consolidation of blocks*, at least one of which is covered by a) or b).³⁰
- 3.6 The changes specified in DV350 are in response to an issue which arose in relation to multi-unit redevelopment of certain residential blocks in some older Canberra suburbs, wherein the residential leases on these original blocks do not specify or limit the number of dwellings permitted.³¹
- 3.7 During the late 1960s and early 1970s, two dwellings (one house and one small flat) were allowed to be built on these blocks, provided the development presented as a single dwelling to the street. The aim at that time was to improve the availability of housing stock while maintaining the low density suburban character.³²
- 3.8 The pre-DV350 definition of 'single dwelling block' in the Territory Plan was found to not apply to these blocks with the extra flat. As a consequence some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan such as restricting plot ratio, block size requirement, replacement dwellings, number of dwellings in each building and restrictions on attics and basements do not apply if multi-unit residential redevelopment is proposed for these blocks. This has resulted in a built form that is not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.³³

INTERIM EFFECT

- 3.9 DV350 has interim effect.³⁴

³⁰ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 7 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

³¹ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 1-3 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

³² Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 1-3 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

³³ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 1-3 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

³⁴ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

- 3.10 As per Section 72 of the Planning and Development Act 2007 interim effect enables the provisions of Draft Variation No. 350 to apply during the defined period starting on the day the draft variation given to the Minister is notified (the notification day).³⁵
- 3.11 The effect of section 72 during the defined period means that the Territory, the Executive, a Minister or a territory authority must not do or approve anything that would be inconsistent with the Territory Plan as if it were amended by the draft variation. Where there is an inconsistency between provisions in the current Territory Plan and provisions in the draft variation, then the draft variation takes precedence for the extent of the inconsistency.³⁶
- 3.12 Interim effect will end on the day the earliest of the following happens:
- i. the day the corresponding plan variation, or part of it, commences;
 - ii. the day the corresponding plan variation is rejected by the Legislative Assembly;
 - iii. the day the corresponding plan variation is withdrawn in accordance with a requirement under section 76 (2)(b)(v) or section 84 (5)(b);
 - iv. the period of 1 year after notification day ends.³⁷

CONSULTATION BY ENVIRONMENT, PLANNING AND SUSTAINABLE DEVELOPMENT DIRECTORATE

- 3.13 The Directorate released the Draft Variation for public comment on 25 May 2018. The closing date for comment was 13 July 2018.
- 3.14 The Directorate received eight written submissions from individuals, community organisations, and industry groups.
- 3.15 The key issues of public concern included:
- Restrictions on future development opportunities as a result of DV350
 - Significant financial impact on lessees of affected blocks
 - DV350 contrary to policy shift towards increased density in existing suburbs
 - Selective planning policy driven by specific instances of concern by individuals or small groups about particular projects in their suburbs
 - Existing planning laws sufficient to prevent high-rise in older suburbs

³⁵ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf; *Planning and Development Act 2007*, section 72 (2).

³⁶ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf; *Planning and Development Act 2007*, section 72 (2).

³⁷ *Planning and Development Act 2007*, section 72 (3)(b).

- Lack of prior consultation on changes proposed in DV350
- Transition arrangements for current development projects should be allowed
- Dual occupancies in new subdivisions adversely affected by new definition.³⁸

3.16 In response to public comments the Directorate revised the proposed definition of 'standard block'

...to exclude blocks originally leased or used for the purpose of two dwellings on or after 18 October 1993 which is when the Territory Plan came into effect and new terminology for 'single dwelling housing' was incorporated into lease purpose clauses. This will ensure that, for example, new leases that are created for multi-unit blocks that are specifically to be developed for dual occupancies are not captured in the definition of standard block.³⁹

3.17 Consequently the revised definition of 'standard block' was changed to state the following:

A standard block is a block with one of the following characteristics –

- a) originally leased or used for the purpose of one dwelling
- b) originally leased or used for the purpose of two dwellings on or before 18 October 1993
- c) created by a consolidation of blocks, at least one of which is covered by a) or b)⁴⁰

3.18 The Directorate's report on the consultation was made available on their website.

UNDERSTANDING OF THE DRAFT VARIATION

3.19 The Territory Plan is a complex document. Draft variations to the Territory Plan can reflect this complexity and it can be difficult for lay persons to understand exactly what the existing rules are and when and how they will be changed by a draft variation. A number of issues were raised by submitters in relation to consultation and understanding of the impact of the DV350 and these have been discussed in Chapter 4.

³⁸ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 4 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

³⁹ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

⁴⁰ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5 https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf.

3.20 There are a few inaccuracies in DV350 that relate to the content of and relevant sections of the *Planning and Development Act 2007* that may impact on the understanding of the draft variation. The Committee noted the following errors:

- the reference to 'ACT Government' when discussing the effect of section 72 in the recommended version of the variation (pg. 5) and when discussing section 65 in the public consultation version of the variation (pg. 8) does not reflect the wording in the *Planning and Development Act 2007* which refers to 'The Territory, the Executive, a Minister or a territory authority'; and
- the reference to section 76 (3)(b)(v) when discussing the effect of section 72 in the recommended version of the variation (pg. 5) and when discussing section 65 in the public consultation version of the variation (pg. 8) is not accurate as this legislative reference does not exist in the current *Planning and Development Act 2007*.⁴¹

Recommendation 1

3.21 The Committee recommends that, subject to the following recommendations, Draft Variation 350: Changes to the definition of a 'single dwelling block' be approved.

Recommendation 2

3.22 The Committee recommends that the Environment, Planning and Sustainable Development Directorate consider a review of references to the *Planning and Development Act 2007* in Draft Variation 350: Changes to the definition of a 'single dwelling block' and in future draft variations.

⁴¹ Draft Variation 350: Changes to definition of 'single dwelling block' – recommended version, August 2018, p. 5. https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1244564/Draft-variation-350-recommended-version-to-Minister.pdf; Draft Variation 350: Changes to definition of 'single dwelling block' – public consultation version, May 2018, p. 8. https://www.planning.act.gov.au/_data/assets/pdf_file/0008/1245392/Appendix-1-Draft-variation-350-single-dwelling-blocks-change-to-definition.pdf.

4 KEY ISSUES

AFFECTED PROPERTIES

- 4.1 The Committee were informed by the Directorate that the blocks affected by the changes to DV350 were:

...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.⁴²

- 4.2 It was notable that no witness was able to provide an exact number of properties or blocks that would be affected by the changes to definition of 'single dwelling block'. Whilst Friends of Hawker Village Inc. (FoHV) estimated the number of affected properties in Page and Scullin at 'about 50'⁴³ the Directorate approximated that 'it is probably in the hundreds that can fall into this category across Canberra'⁴⁴ and informed the Committee that:

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.⁴⁵

- 4.3 When further pressed about why the exact number of blocks affected could not be provided the Directorate indicated that:

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,

⁴² Ms Kaucz, *Proof Transcript of Evidence*, 5 December 2018, p. 21.

⁴³ Ms Gingell, *Proof Transcript of Evidence*, 5 December 2018, p. 16.

⁴⁴ Ms Kaucz, *Proof Transcript of Evidence*, 5 December 2018, p. 21.

⁴⁵ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 21.

to take a sample and extrapolate out the numbers, which, as has been mentioned earlier, is in several hundreds.⁴⁶

- 4.4 It was estimated, through evidence provided to the Committee that up to eight proponents had been directly affected by the changes in DV350, to the extent that they had progressed plans to develop a set number of dwellings on an affected block and had to cease or significantly change their plans. It was also noted that some of these were at the development application stage.⁴⁷

EFFECT OF CHANGE

GENERAL

- 4.5 The changes brought about by DV350 were welcomed by some sectors of the community, in particular FoHV, who informed the Committee that they had spent a number of years campaigning to remove the planning anomaly created by the pre-DV350 definition that applied to blocks in a number of suburbs in their area:

In this instance we have been raising this particular issue for over four years, and we have finally got to that point where, thankfully, something has been done about it. It seems to me—it suggests—that it was never intended for these particular blocks in any way to be treated differently from the blocks on either side of them.⁴⁸

- 4.6 They also indicated that they were 'satisfied that the changes inherent in Draft Variation No. 350 address our concerns and will lead to better outcomes in the affected suburbs.'⁴⁹

- 4.7 In reaffirming their aim for consistency within suburbs FoHV also informed the Committee that:

We accept that there are within the multi-unit housing code maximums for the number of townhouses and we accept that if one of these types of buildings and leases is in an RZ2 area the redevelopment should comply with the number of dwellings permitted in RZ2, just like it would for every other neighbour there.⁵⁰

RZ1 is a bit trickier, but my view would be that when a person buys a property in RZ1 and you have got the same lease as everybody around you, and there is a single house

⁴⁶ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 24.

⁴⁷ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018; , Ms Jackson, *Proof Transcript of Evidence*, 5 December 2018; Submission No. 2, Master Builders Association.

⁴⁸ Ms Coghlan *Proof Transcript of Evidence*, 5 December 2018, p. 13.

⁴⁹ Submission No. 3, Friends of Hawker Village Inc.

⁵⁰ Ms Gingell, *Proof Transcript of Evidence*, 5 December 2018, p. 12.

on it, you would have the same redevelopment opportunities—all of you—and therefore, it is these anomalous ones that need to be dealt with.⁵¹

4.8 Whilst the Kingston and Barton Residents Group, in their submission to the public consultation process, also supported the introduction of the changes in DV350 a number of planners and industry bodies expressed significant concerns about the changes and the impacts on the owners and developers of these blocks.

4.9 In this context evidence was provided to the Committee that a number of planning rules affected by the changes in DV350 were ‘within the multi-unit housing development code under the Territory Plan.’⁵² These rules included 6,7,8,10,11,12,13 and 14 which the Committee largely related to plot ratio and density of dwellings:

Rules 6, 7 and 8 relate to the plot ratio that is permitted on blocks in RZ1 zones, in RZ2 zones and specifically for surrendered blocks. Rules 10, 11, 12, 13 and 14 relate to the density of dwellings that are permitted on RZ1 and RZ2 blocks, depending on the type of development that is pursued.⁵³

4.10 Ms Jackson from Canberra Town Planning stated to the Committee that:

Prior to the draft variation, those rules did apply, but the wording of the rules was “single dwelling”, which has now been replaced by “standard block”. Because of the way the definition of “standard block” is now applied, whereas previously we would have said that those rules did not apply because it was not a single dwelling block, they are now standard blocks; therefore, these rules do apply.⁵⁴

4.11 However the Committee was also informed that should the change to the definition of ‘single dwelling block’ not be effected there would be an impact on urban amenity and uniformity in suburbs with affected blocks:

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.⁵⁵

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

⁵¹ Ms Gingell, *Proof Transcript of Evidence*, 5 December 2018, p. 12.

⁵² Ms Jackson *Proof Transcript of Evidence*, 5 December 2018, p. 4.

⁵³ Ms Jackson, *Proof Transcript of Evidence*, 5 December 2018, p. 5.

⁵⁴ Ms Jackson, *Proof Transcript of Evidence*, 5 December 2018, p. 5.

⁵⁵ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 22.

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.⁵⁶

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.⁵⁷

CONSULTATION

- 4.12 In evidence provided to the inquiry and in submissions received by the Directorate during the consultation period, it was noted that some submitters felt that the nature and period for consultation was inadequate, particularly for developers and lessees impacted by the change.

...this draft variation and the policy changes it introduces, have not been subject to broad community and stakeholder discussion or consultation and provide the Lessee no opportunity to consider the impact of these changes to the project...⁵⁸

Whilst we understand that the ACT Government wished to avoid a situation where they announced their intended changes and then experienced a rush of development applications to avoid being covered by the new requirements, we believe that public and industry stakeholder consultation should have occurred prior to any variations being implemented.⁵⁹

- 4.13 The Master Builders Association (MBA) also indicated that there was also a lack of knowledge in the sector about the proposed changes:

From my perspective I did not have any indication that the DV350 changes were being implemented. I cannot comment on whether there had been community feedback. I am sure that there was prior to that, but the MBA, certainly during my tenure there, was not provided with any industry consultation period.⁶⁰

- 4.14 It was also suggested in a submission to the inquiry that public awareness of the proposed change was restricted, effectively to those who read the Canberra Times or who can access a

⁵⁶ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, pp. 22-23.

⁵⁷ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 23.

⁵⁸ Canberra Town Planning, Public Consultation Submission.

⁵⁹ Submission No. 2, Master Builders Association.

⁶⁰ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 6.

computer to monitor government announcements. The submitter indicated that she only knew about the change because it impacted on the sale of her property. In this context she suggested that:

Perhaps a simple letter in a rates notice to those people affected would have allowed others to voice their concerns.⁶¹

CONGRUENCE WITH POLICY

- 4.15 Concerns were raised that the changes involved in DV350 were contrary to the ACT Government housing policy which was perceived to advocate a move towards a broader infill program of development and alternate forms of housing:

The changes proposed by DV350 have pre-empted the outcome of the Housing Choices consultation. This has resulted in a mixed message being sent to the community and industry about the government's housing policy and support, or otherwise, for alternate forms of housing (such as townhouses) in residential areas.⁶²

- 4.16 The Housing Industry Association (HIA) in their submission to the public consultation process argued that the position of the ACT Government has been to 'increase density within the inner suburbs' and that the blocks affected by the changes in DV350 would have, pre-DV350, provided:

a development opportunity that contributes to the broader goals of increasing housing supply (and therefore improving affordability), reducing Canberra's environmental footprints and improving transport outcomes through greater density.'⁶³

- 4.17 Both the MBA and HIA felt that existing measures were sufficient to manage an appropriate level, type and size of development in affected suburbs:

Whilst the implementation of DV350 (with interim effect) may provide further legislative instruments to prevent these multi-unit developments from being approved in established suburbs, Master Builders is of the view that sufficient planning laws and height restrictions are already in place that prevent this from occurring.⁶⁴

Should a limited amount of development be allowed to occur on these blocks, there is still the opportunity for the planning authority to temper the level of development through the approval process to ensure that the rights of builders and developers are upheld, whilst being sympathetic to the character of the suburb.⁶⁵

⁶¹ Submission No. 1, [REDACTED]

⁶² Submission No. 2, Master Builders Association.

⁶³ Housing Industry Association, Public Consultation Submission.

⁶⁴ Submission No. 2, Master Builders Association.

⁶⁵ Housing Industry Association, Public Consultation Submission.

4.18 In response the Directorate indicated that:

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.⁶⁶

INTERIM EFFECT AND FINANCIAL IMPLICATIONS

4.19 A key concern raised by industry bodies was the impact of DV350 having interim effect and what they felt was the retrospective application of the changes brought about by DV350:

The interim effect provisions do not consider those people who may have been investing heavily in designs and plans for a significant period, only to find that they will no doubt have to start the process again or significantly modify the existing plans, to comply with the new requirements.⁶⁷

The implementation of DV350 and the essentially retrospective application may be considered to be a denial of natural justice and procedural fairness to a number of applicants who are working towards the pre-DV350 requirements.⁶⁸

4.20 This was echoed by the HIA in their submission to the public consultation process:

The decision to apply interim effect to draft variation in accordance with Planning and Development Act 2007, has effectively made this decision retrospective, impacting current holders of these blocks that are in various stage of development.⁶⁹

⁶⁶ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 22.

⁶⁷ Submission No. 2, Master Builders Association.

⁶⁸ Submission No. 2, Master Builders Association.

⁶⁹ Housing Industry Association, Public Consultation Submission.

- 4.21 Whilst the HIA indicated its understanding of the overarching concept of ‘interim effect’ it highlighted the financial impacts that it believed the use of this measure was having on owners and developers in relation to DV350:

Application of an interim effect for the decision has left a small number of businesses exposed to financial loss, whereby they have purchased land with the reasonable expectation that they would be able to undertake a development in accordance with the planning rules at the time.

While these builders or developers may not have submitted a development application, they have expended significant funds to progress these plans – often in the tens of thousands of dollars –with consultants and architects, without access to the knowledge that DV350 was being drafted.

Equally, the investment in the land itself was likely to have included a premium on the basis of the unique characteristic of the land, which will be lost through no fault of their own, if the interim effect of this proposed change stands as is.⁷⁰

- 4.22 A dominant concern of planners and industry bodies was the financial impact of the effective reduction in the number of allowable dwellings on the affected blocks which had resulted from the change. With consideration of variable building costs and block size, the MBA estimated this cost at half a million dollars per development:

If we are talking about a two to three-bedroom townhouse, that would be the equivalent of \$500,000, depending on which suburb that is. Obviously you would need to take into account that there would be construction costs that someone does not need to pay, so it would not be a pure \$500,000. But just on the cost issue, the thing that we keep coming across in speaking to the members that are affected by this is that they are not developers in the true sense of the word; they are smaller businesses who may just be a mum and dad who have come across an opportunity and thought, “We could build three townhouses or four townhouses.” I keep using that example because in the examples and with the members that we have spoken to, that is what they were intending to do: build three or four townhouses.⁷¹

- 4.23 Whilst acknowledging there would be some losses the FoHV did not concur with the figures approximated and stated:

We appreciate that developers who have planned to exploit the current planning loophole will not welcome this change and might suffer some reduction in their profit expectations. This will always happen when any planning rule is changed which potentially diminishes profit return for developers.⁷²

⁷⁰ Housing Industry Association, Public Consultation Submission.

⁷¹ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 4.

⁷² Submission No. 3, Friends of Hawker Village Inc.

I felt that was an exaggeration to say they would be out of pocket half a million dollars. They will make a lower profit from having fewer developed dwellings but they would have the capacity to make them larger—put an extra bedroom into them or something—which would bring a higher price.⁷³

4.24 The FoHV further indicated that:

It is only the number of dwellings. They can still build a four-bedroom one where they were going to build a three-bedroom one, and they will be able to charge more for it. We are talking about reduced profit, that is all. The fact is that they have sought out these blocks where they know this lease provision has this hole in the multi-unit housing development code which does not constrain the number of dwellings. They seek these blocks out with the intent of wanting to put more than they could on under RZ2. The ones in Aranda there, they would be RZ2 blocks, all of them, and they could be developed under the RZ2 rules and dwellings. These are people who have sought out an opportunity, because they have discovered it is there, to put more dwellings on than would normally be allowed for the size of the block under RZ1 and RZ2.⁷⁴

4.25 The Directorate informed that Committee that DV350 had been given interim effect because:

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.⁷⁵

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.⁷⁶

4.26 Whilst the Directorate acknowledged that the interim effect may have had some financial implications on particular individuals and organisations who may have been seeking to develop blocks under prior to the changes in DV350, they also affirmed the need to listen to the views of the ACT community:

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

⁷³ Ms Coghlan *Proof Transcript of Evidence*, 5 December 2018, p. 15.

⁷⁴ Ms Gingell, *Proof Transcript of Evidence*, 5 December 2018, p. 14.

⁷⁵ Minister Gentleman, *Proof Transcript of Evidence*, 12 December 2018, p. 24.

⁷⁶ Minister Gentleman, *Proof Transcript of Evidence*, 12 December 2018, p. 24.

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.⁷⁷

PROPOSED TRANSITION PERIOD

4.27 In discussing the effects of the changes brought about by DV350 the MBA highlighted the absence of a transition period for the changes to occur:

Our concern with the change was that there was no transition period allowed. Perhaps there needed to be a change; perhaps there did not. But, at the end of the day, people were working towards a certain outcome, and before they could lodge their development application there was a change. Whether or not you fell one day either side could inherently change your development outcome.⁷⁸

4.28 Whilst the MBA specifically noted that they did not want a situation where ‘the government announces that there will be a change to come into effect in six months’ time and then there is a rush of development applications, with people trying to squeeze in before that deadline’⁷⁹ they believed that:

if a person who wanted to make an application could show that they had been working towards the previous definitions, they ought to be permitted to apply those previous definitions rather than be subject to the new DV 350, provided that they could actually show that they had engaged a designer or engaged a planner and had exerted money to get the process started.⁸⁰

4.29 In effect both the MBA and HIA suggested that a transition period be adopted, with the MBA proposing:

A six month transition period be provided, which allows for Owners who have already committed to development proposals (and can provide evidence of such commitment) to lodge and have their development application assessed under the pre-DV350 planning rules and requirements.⁸¹

4.30 The HIA approach was similar but more prescriptive in that:

builders or developers that own blocks that will be affected by DV350, will be exempt from the variation, provided that:

- they purchased the block prior to 25 May 2018, and

⁷⁷ Minister Gentleman, *Proof Transcript of Evidence*, 12 December 2018, p. 25.

⁷⁸ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 6.

⁷⁹ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 4; Submission No. 2, Master Builders Association.

⁸⁰ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 4.

⁸¹ Submission No. 2, Master Builders Association.

- the development application is submitted before 1 January 2019, and the application is lodged with all requisite documentation required to pass the completeness check before 1 July 2019.⁸²

4.31 In this context the MBA also stated to the Committee that in the interests of fairness the transition period would only apply to developers who could 'show [they] had been working towards something'.⁸³

There would need to be a definition. It could not just be simply, "I saw that block and I thought I wanted to purchase it and put four townhouses on it." There would need to be a defined criteria that, if you could provide evidence that you had engaged a planner or a designer and there was a development application partly approved or something to that effect, that would be sufficient. It would not be enough that you had simply purchased it and thought about it; there would need to be some evidence.⁸⁴

4.32 The FoHV did not agree with the need for a transition period stating to the Committee that:

when developers lodge their development application they have to be aware that there is a chance they will be knocked back and they will have to fix something or other. All that costs money. They might have to go back and redo plans. The example we quoted in Page, in RZ2, had one knocked off in the first instance and they went off and redesigned the whole thing and re-lodged the application. The example in Scullin in RZ1 did much the same sort of thing in the process of the development application—they continually revised it to try and get it approved. It all costs money, and that is without this change in the legislation. It is a fact of life.⁸⁵

4.33 The Directorate indicated that whilst it was administratively possible to organise a transitional arrangement that it was an unlikely outcome as:

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.⁸⁶

⁸² Housing Industry Association, Public Consultation Submission.

⁸³ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 8.

⁸⁴ Ms Berry, *Proof Transcript of Evidence*, 5 December 2018, p. 8.

⁸⁵ Ms Coghlan *Proof Transcript of Evidence*, 5 December 2018, pp. 15-16.

⁸⁶ Mr Ponton, *Proof Transcript of Evidence*, 12 December 2018, p. 27.

4.34 The Directorate went on to explain that their decision took into consideration the concerns and expectations of the existing residents in the applicable RZ zones and sought to close the ‘loophole’ in the planning rules so that ‘the Canberra community can have confidence in the planning system and, of course, in the independent advice from the planning authority.’⁸⁷

4.35 When queried as to what ‘would the government lose if it chose to give a grace period’ to current proponents⁸⁸ the Minister responded that:

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.⁸⁹

COMMITTEE COMMENT

4.36 The Committee acknowledges that the use of ‘interim effect’ could be perceived as “too blunt an instrument” on occasion but recognises that there are circumstances where an immediate change to the Territory Plan is necessary to prevent unintended consequences.

4.37 Whilst the Committee also recognises that the changes to definition of ‘single dwelling block’ in the Territory are necessary, not all members of the Committee believe that the changes that have been brought about through the interim effect of DV350 have been fair to proponents of affected blocks who have significantly progressed their development plans. Consequently questions have been raised as to the appropriate use of ‘interim effect’, particularly without a transition period, on this occasion.

4.38 Whilst the concept of a transition or ‘grace’ period was seen as a viable option in some circumstances the majority of Committee members were not supportive of the implementation of a transition period in this instance.

4.39 The Committee acknowledges that there have been financial impacts for proponents and lessees, brought about by the changes in DV350, however the Committee feels that the impact on surrounding residents and urban amenity in the affected residential areas without these changes is equally pertinent. To ensure ongoing fairness and equity to both proponents and residents in residential areas the majority of the Committee feels that the need for consistency in planning rules and criteria in residential areas is paramount.

⁸⁷ Minister Gentleman, *Proof Transcript of Evidence*, 12 December 2018, p. 28.

⁸⁸ Mr Parton MLA, *Proof Transcript of Evidence*, 12 December 2018, p. 29.

⁸⁹ Minister Gentleman, *Proof Transcript of Evidence*, 12 December 2018, p. 29.

DRAFTING OF 'STANDARD BLOCK' DEFINITION

4.40 It was brought to the Committee's attention that whilst the change in the definition of 'standard block' following the consultation period had resolved some issues raised during the public consultation process, there appeared to be a drafting error which could potentially create additional issues.

4.41 [REDACTED] explained in his submission that:

Conditions a) and b) of the definition are not mutually exclusive and therefore a block may have both characteristics. For example, a block originally used for a single dwelling but leased for the purpose of two dwellings before 1993. An example of such a block is Block 10 Section 88 in the division of Narrabundah. Such blocks satisfy two (not one) of the conditions and are therefore not classified as a 'standard block' by a literal interpretation of the definition which stipulates only 'one' condition can be satisfied. This literal interpretation is notwithstanding the Legislation Act 2001, Section 145 which states 'words in the singular number include the plural...' as 'one' is to be interpreted as numeric rather than a word in a singular number.⁹⁰

4.42 He went on to explain that this error could be overcome by the use of the following definition:

A standard block is a block with one of the following characteristics

a) originally leased on or before 18 October 1993 and originally leased or used for the purpose of one or two dwellings

b) originally leased after 18 October 1993 and originally leased for the purpose of one dwelling

c) created by a consolidation of blocks, at least one of which is covered by a) or b)⁹¹

4.43 Whilst conceding that an alternative definition could simply state 'one or more of the following characteristics' [REDACTED] was at pains to point out that his suggested definition

'...has the advantage of excluding new blocks specifically permitting two dwellings from being forever classified as a standard block if a single dwelling is first erected or staged development occurs.'⁹²

4.44 In response the Directorate indicated that:

⁹⁰ Submission No. 4, [REDACTED].

⁹¹ Submission No. 4, [REDACTED].

⁹² Submission No. 4, [REDACTED].

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.⁹³

Recommendation 3

4.45 The Committee recommends that the ACT Government reword the proposed definition of a ‘*standard block*’ so that drafting errors are corrected.

⁹³ Ms Kaucz, *Proof Transcript of Evidence*, 12 December 2018, p. 26.

5 CONCLUSION

- 5.1 The Committee has made 3 recommendations
- 5.2 The Committee would like to reiterate its thanks to the Minister, officials, witnesses and submitters who contributed their time and effort to this inquiry.


Caroline Le Couteur MLA

Chair

12 February 2019

APPENDIX A - WITNESSES

5 DECEMBER 2018

- Ashlee Berry - MBA
- Nichelle Jackson – Canberra Town Planning/Member of MBA
- Robyn Coghlan - Friends of Hawker Village
- Christine Gingell - Friends of Hawker Village
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12 DECEMBER 2018

- Mr Mick Gentleman MLA, Minister for Planning and Land Management
- Mr Ben Ponton, Director-General, EPSDD
- Dr Erin Brady, Deputy Director-General, Land Strategy and Environment, EPSDD
- Ms Alix Kaucz, Senior Manager, Territory Plan Unit, EPSDD
- Ms Rumana Jamaly, Manager, Residential, EPSDD

APPENDIX B – SUBMISSIONS

Submission Number	Submitter	Received
1	[REDACTED]	31/10/18
2	Master Builders Association (MBA)	5/11/18
3	Friends of Hawker Village Inc.	5/11/18
4	Peter Young	6/11/18

DISSENTING REPORT – MARK PARTON MLA

**STANDING COMMITTEE ON PLANNING AND URBAN RENEWAL
DRAFT VARIATION TO THE TERRITORY PLAN, No. 350
CHANGES TO DEFINITION OF 'SINGLE DWELLING BLOCK'
DISSENTING COMMENTS – MARK PARTON**

I concur with the basic premise of this report regarding the desirability of a standardised definition for a dwelling block in order to remove ambiguity and improve clarity for consumers of information in the Territory Plan.

My concern, and a serious one, is the impact of the Interim Effect provision which makes Draft Variation 350 enforceable from its Notification Date of 25 May 2018. The retrospective nature of Interim Effect unfairly disadvantages those who had commenced a bona fide development process, or had taken reasonable steps towards redeveloping one of the affected properties. These steps may have included the purchase of an affected block, expenditure on works to prepare a block for redevelopment or securing credit finance to enable these activities.

The retrospective impact of DV 350 imposes a sudden and unforeseen loss on small companies and individuals who had a genuine expectation that they could proceed under pre DV 350 assumptions. In many cases, owners may have incurred a premium to buy such blocks based on previous planning rules and are now confronted with significant deprivation through no fault of their own.

As it stands, DV 350 does not provide a transition period to cover those caught up in the 'guillotine effect' of the Notifiable Instrument. In a previous version of the draft report (circulated in mid-January 19), there was a comment on the absence of transitional arrangements and the inability to invoke interim effect after an appropriate transitional period. The same draft had a recommendation seeking adjustment to Section 72 of the Planning and Development Act 2007 to address this deficiency. The Committee comment and the associated Recommendation 3 were as follows:

- 4.40 The Committee notes that section 72 of the *Planning and Development Act 2007* currently does not envisage transitional arrangements – rather, 'interim effect' is either in place or not in place. This appears to mean that the Directorate does not have the option of commencing 'interim effect' after a transitional period or excluding existing development applications from interim effect.

Recommendation 3

- 4.41 **The Committee recommends that the ACT Government consider amending section 72 of the *Planning and Development Act 2007* to provide for transitional arrangements during interim effect.**

The version of the Committee's Report prepared for the Chair's signature omits the Committee's observation on Section 72 of the Planning and Development Act and Recommendation 3. If Recommendation 3 had remained in the Report, there would have been a fair and reasonable proposal for the government to act on. This omission removes any possibility of relief or a fair and reasonable outcome for those caught up by the sudden impact of Interim Effect.

I believe the Committee should:

- a. Support reinstatement of the previous Recommendation 3;
- b. Recommend a transition period (some reasonable duration prior to 25 May 2018) to allow relief for those caught up and disadvantaged by the Interim Effect provision;
- c. Agree that such relief be prescribed to allow pre DV 350 planning rules to apply for those who had commenced a bona fide process to redevelop a block now denied by DV 350;
- d. Agree that applicants who can demonstrate reasonable evidence be provided with relief within a prescribed transition period;
- e. Agree that reasonable evidence include but not be restricted to;
 - (i). An owner who can prove they were committed to a development proposal including purchase of an affected block, completion of works to enable redevelopment prior to lodging a Development Application or committed to other related actions;
 - (ii). Proof that preparation was being undertaken to lodge a Development Application including completion and payment for site plans and drawings; and
 - (iii). Other steps deemed to be reasonable proof, for example, entering into credit finance or other loan arrangements or commissioning consultants or architects.
- f. Agree, that in the event of government refusal to provide relief, that the government provide adequate compensation for those who can demonstrate bona fide proof of their commitments and intentions in relation to affected blocks.

Signed

Mark Parton MLA

13 February 2019

Illustrative TBL Presentation for Cabinet Submissions

Directorate: Environment, Planning and Sustainable Development Directorate

Title of the Submission: Government Response to Standing Committee on Planning and Urban Renewal Report No 7: Draft Variation to the Territory Plan No. 350: Changes to the definition of ‘single dwelling block’

Summary of Impacts	
	<ul style="list-style-type: none"> • The proposal seeks to provide responses to the recommendations contained in the Standing Committee on Planning and Urban Renewal Report No. 7 • The proposal will largely result in net neutral impacts on social, economic and environmental outcomes. • There are no known implementation risks associated with this proposal.

Key to impacts: Red – negative, Amber neutral and Green Positive.

Social

Justice and rights	<ul style="list-style-type: none"> • The responses support the changes proposed in the variation and are not expected to have an adverse impact on Justice and Rights.
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Economic

ACT Government Budget	<ul style="list-style-type: none"> • The responses are expected to have a neutral impact on the ACT Government Budget.
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Productivity	<ul style="list-style-type: none"> • The responses are not expected to have an adverse impact on Productivity.
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Investment	<ul style="list-style-type: none"> • The responses are not expected to have an adverse impact on Investment.
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Competition	<ul style="list-style-type: none"> • The responses are not expected to have an adverse impact on Competition.
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Environmental

Energy	<ul style="list-style-type: none"> • The responses are expected to have a neutral impact on Energy.
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OPEN ACCESS ASSESSMENT: DECISION SUMMARY

PART A: Release proposed

The Chief Minister must now proactively release the information described in section 23 of the *Freedom of Information Act 2016* (the FOI Act) unless the information is contrary to the public interest in accordance with sections 16 and 17, and schedules 1 and 2 of the FOI Act.

If you believe that release of this information would be contrary to the public interest, please complete Part B.

Title of decision: ACT Government Response to the Standing Committee on Planning and Urban Renewal Report No. 7: Draft Variation to the Territory Plan No. 350 – Changes to the definition of ‘single dwelling block’

Summary of the decision

Cabinet considered the Government Response to the Standing Committee on Planning and Urban Renewal Report No. 7 following the Committee’s inquiry into Draft Territory Plan Variation No. 350.

Attachments for release

	Release through the Open Access website?	Release by Directorate?
Summary of the decision	Yes	No
<u>Attachment A</u> Standing Committee Report No. 7 – Draft Variation to the Territory Plan No 350: Changes to definition of ‘single dwelling block’	No, Report is already publicly available	No
<u>Attachment B</u> Government Response to Standing Committee Report No 7	No	Yes, will be tabled in the Legislative Assembly
<u>Attachment C</u> Minister tabling statement	No	Yes, will be presented in the Legislative Assembly
<u>Attachment D</u> Triple Bottom Line assessment	Yes (TBL to be released)	
<u>Attachment E</u> Open Access Assessment – Decision Summary		

From: [Kaucz, Alix](#)
To: [Craemer, Raoul](#)
Cc: [Ridsdale, Janine](#)
Subject: RE: 19/111 Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of 'single dwelling block'
Date: Friday, 5 April 2019 4:15:00 PM
Attachments: [image001.jpg](#)

Hi Raoul

The change to the definition will allow those blocks that were specifically allowed to have 2 dwellings (i.e. the lease states there can be 2 dwellings) to continue to be able to have 2 dwellings. The original wording for the definition change would have meant that a block that was specifically allowed to have 2 dwellings could only have 1 dwelling. Blocks with a lease that states 'residential purposes' or something generic would only be able to have 1 dwelling (consistent with the intention of the policy change).

The ability to build on currently vacant blocks is dependent on the uses permitted in that particular zone. It is unclear at this stage whether the Territory Plan review will rezone specific blocks or not. Happy to discuss this further over the phone if you would like.

Kind regards

Alix

Alix Kaucz RPIA | Senior Manager - Territory Plan Section

Phone 02 6205 0864

Planning, Land and Building Policy | Environment, Planning and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | PO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Craemer, Raoul
Sent: Friday, 5 April 2019 10:05 AM
To: Kaucz, Alix <Alix.Kaucz@act.gov.au>
Subject: 19/111 Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of 'single dwelling block'

UNCLASSIFIED Sensitive: Cabinet

Hi Alix

I haven't read this submission yet, but I wonder if you could tell me whether the proposed change to the definition will have any impact on what people can or might choose to build on a block?

You might also be able to help me with a bit of wider advice in terms of anything else in the planning framework that might encourage people to build, e.g., with the TP Review, where any proposed changes may encourage people to build on currently vacant blocks? (I am working on a paper on undeveloped land in the ACT separately to the Cabinet process above.)

Thanks for any advice or pointers in advance Alix.

Regards,
Raoul

Raoul Craemer | Assistant Director
Housing, Environment, Land and Planning Section
Economic and Regional Policy Branch, Policy and Cabinet Division
Chief Minister, Treasury and Economic Development Directorate | ACT Government

P: 02 6205 8475 | M: [REDACTED] | email raoul.craemer@act.gov.au

Rap-signature-block



From: [Craemer, Raoul](#)
To: [Kaucz, Alix](#)
Cc: [Ridsdale, Janine](#)
Subject: RE: 19/111 Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of 'single dwelling block'
Date: Friday, 5 April 2019 4:35:53 PM
Attachments: [image001.jpg](#)

UNCLASSIFIED Sensitive: Cabinet

Thanks Alix, yes I might call you next week, really it's about understanding whether anything in the TP supports or stands in the way of people developing currently vacant blocks, especially the ones that are not subject to extension of time fees and could therefore remain vacant more or less indefinitely (e.g., with lapsed DAs).

I imagine that re-zoning certain areas, or allowing dual occupancy on smaller blocks, for example, would affect land owners' decisions about whether or not to develop a particular block... so if you (or Janine) have any ideas in that regard, feel free to email me as well.

I would like to incorporate any such ideas in a brief I am currently drafting on the issue of undeveloped land in the ACT (requested by Minister Ramsay).

Poppy McRae in Geoffrey Rutledge's office has been assisting us with this effort as well.

OK, hopefully catch up on the phone next week.

Cheers,
Raoul

From: Kaucz, Alix
Sent: Friday, 5 April 2019 4:16 PM
To: Craemer, Raoul <Raoul.Craemer@act.gov.au>
Cc: Ridsdale, Janine <Janine.Ridsdale@act.gov.au>
Subject: RE: 19/111 Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of 'single dwelling block'

Hi Raoul

The change to the definition will allow those blocks that were specifically allowed to have 2 dwellings (i.e. the lease states there can be 2 dwellings) to continue to be able to have 2 dwellings. The original wording for the definition change would have meant that a block that was specifically allowed to have 2 dwellings could only have 1 dwelling. Blocks with a lease that states 'residential purposes' or something generic would only be able to have 1 dwelling (consistent with the intention of the policy change).

The ability to build on currently vacant blocks is dependent on the uses permitted in that particular zone. It is unclear at this stage whether the Territory Plan review will rezone specific blocks or not. Happy to discuss this further over the phone if you would like.

Kind regards

Alix

Alix Kaucz RPIA | Senior Manager - Territory Plan Section

Phone 02 6205 0864

Planning, Land and Building Policy | Environment, Planning and Sustainable Development | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | PO Box 158 Canberra ACT 2601 | www.planning.act.gov.au

From: Craemer, Raoul

Sent: Friday, 5 April 2019 10:05 AM

To: Kaucz, Alix <Alix.Kaucz@act.gov.au>

Subject: 19/111 Government response to Standing Committee on Planning and Urban Renewal Report No. 7 – Draft Variation to the Territory Plan No. 350: Changes to definition of ‘single dwelling block’

UNCLASSIFIED Sensitive: Cabinet

Hi Alix

I haven't read this submission yet, but I wonder if you could tell me whether the proposed change to the definition will have any impact on what people can or might choose to build on a block?

You might also be able to help me with a bit of wider advice in terms of anything else in the planning framework that might encourage people to build, e.g., with the TP Review, where any proposed changes may encourage people to build on currently vacant blocks? (I am working on a paper on undeveloped land in the ACT separately to the Cabinet process above.)

Thanks for any advice or pointers in advance Alix.

Regards,
Raoul

Raoul Craemer | Assistant Director

Housing, Environment, Land and Planning Section

Economic and Regional Policy Branch, Policy and Cabinet Division

Chief Minister, Treasury and Economic Development Directorate | ACT Government

P: 02 6205 8475 | M: [REDACTED] | email raoul.craemer@act.gov.au

Rap-signature-block



SENSITIVE: CABINET**TABLE OF COMMENTS RECEIVED DURING EXPOSURE DRAFT – 19/111**

Exposure Circulation Undertaken: Choose an item.

Reason for exception: Please state reason for exception to full circulation or state N/A

Dates Circulated: Please enter dates circulated here

Directorate/ Other	Comment	Response
CMTEDD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
JACSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
HD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
CHS	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
ETD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
TCCS	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
CSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
EPSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
Statutory Office Holders	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>

SENSITIVE: CABINET

TABLE OF FINAL COMMENTS – 19/111

[Please specify the duration the submission was circulated for final circulation, and any agreed deviation from circulation (late lodgement or shortened)]

Final Circulation Undertaken: Choose an item.

Reason for exception: Please state reason for exception to full circulation or state N/A

Dates Circulated: Please enter dates circulated here

Directorate/ Other	Comment	Response
CMTEDD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
JACSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
HD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
CHS	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
ETD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
TCCS	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
CSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
EPSD	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>
Statutory Office Holders	Supported/Not Supported <i>[briefly set out why not]</i>	<i>[Summarise response]</i>

From: [Kaucz, Alix](#)
To: [Ridsdale, Janine](#)
Subject: FW: FOR ACTION: 19/06049 - 19/111 Government Response to Standing Committee on Planning and Urban Renewal—Report 7— Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block'
Date: Tuesday, 26 February 2019 3:53:00 PM
Attachments: [Cabinet-Number-Request-Form.obr](#)
[02_ Exposure Draft Documentation.obr](#)

Hi Janine

The cabinet timeframes for DV350. Happy to discuss if you would like. Simon has done a few of these now and should be able to give some advice on cab sub content

Alix

From: EPSD Government Services
Sent: Monday, 25 February 2019 4:20 PM
To: Kaucz, Alix <Alix.Kaucz@act.gov.au>
Cc: Croke, Isabella <Isabella.Croke@act.gov.au>
Subject: FOR ACTION: 19/06049 - 19/111 Government Response to Standing Committee on Planning and Urban Renewal— Report 7— Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block'

UNCLASSIFIED Sensitive: Cabinet

Hi Alix

The Standing Committee on Planning and Urban Renewal – Report 7 – Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block' was tabled in the Assembly on 21 February 2019. A Government Response is due back to the Chair by 20 June 2019.

A Cabinet date for the Government Responses has been set for 28 May 2019. Please find attached, request for Cabinet Number form and templates for an exposure draft. Can you please complete the Cabinet Number Request form (I have made a start) and return to Government Services as soon as practicable as it is required for record purposes by Cabinet Office.

To assist with meeting the Cabinet Date, a timeline for the submission is as follows:

		28/05/19
Cabinet Submission		Timeframe
1	Start drafting the Cabinet package; - draft a Cabinet submission and fill in Attachments to submission - include a covering brief to the Minister detailing a summary of the submission and seeking their agreement to circulate to WHOg. **Provide submission to Treasury for agreement	Thursday, 21 February 2019
2	ED cleared package to Government Services	Thursday, 28 March 2019
3	Government Services to QA package and submit to DDG	Friday, 29 March 2019
4	Government Services submit package to DDG	Monday, 1 April 2019
5	Government Services to send DDG cleared EXP package to Minister's Office	Friday, 5 April 2019
6	Government Services to lodge Ministerial approved exposure draft cabsub with Cabinet Office (to undertake 5 day exposure draft circulation): <u>WORK in TRACK CHANGES</u>	Friday, 19 April 2019
7	Finalise the Cabinet package; - update the covering Minister's Brief - add agencies comments to the EXP comments Matrix - update (if required) the Cabinet submission - update relevant Attachments to Cab Sub (Attachment A, B, C etc) - write a Cabinet Brief (one page summary of the submission, similar to a QTB)	Friday, 26 April 2019
8	Business area to submit final package to Executive Director for clearance	Monday, 29 April 2019
9	Business area to submit ED cleared final package to Government Services	Tuesday, 30 April 2019
10	Government Services to QA final package and provide to DDG	Wednesday, 1 May 2019

11	DDG to provide DDG cleared package to DG	Friday, 3 May 2019
12	Government Services to send DG cleared package to Minister's Office	Tuesday, 7 May 2019
Government Services to lodge final submission with Cabinet Office by 10am		
13	(to undertake 48 hour Final Agency Comment circulation)	Monday, 20 May 2019
14	Cabinet consideration of cabsub (in the week beginning):	Tuesday, 28 May 2019

From: Darville, Pam **On Behalf Of** CMTEDD Government Business and Coordination

Sent: Friday, 22 February 2019 4:19 PM

To: Ponton, Ben <Ben.Ponton@act.gov.au>

Cc: EPSD Government Services <EPSDGovernmentServices@act.gov.au>

Subject: For action: Government Response to Standing Committee on Planning and Urban Renewal—Report 7— Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block'

Mr Ben Ponton
 Director-General
 Environment, Planning and Sustainable Development Directorate

Dear Mr Ponton

Standing Committee on Planning and Urban Renewal—Report 7— Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block'

The Standing Committee on Planning and Urban Renewal tabled Report No. 7 (the Report) in the Legislative Assembly on 21 February 2019. A Government Response (the Response) to the Report is a matter for coordination by the Environment, Planning and Sustainable Development Directorate.

Standing Order 254A states a response is to be provided to the Chair of the Committee within four months of the presentation of the report; or provided to the Speaker for out of session circulation to members and tabled by the Minister on the next day of sitting.

A Response to the Report is due by 20 June 2019. The Response has been scheduled for Cabinet on 28 May 2019. The Cabinet Office has issued Cabinet number CAB2019/111. Your Cabinet Liaison Officer can contact the Cabinet Office at any time to discuss scheduling and circulation timeframes.

If you have any queries concerning this advice please contact me on 62050543.

Yours sincerely

Pam Darville

Assistant Director – Assembly and Government Business Coordination

Phone: +61 2 6205 0543 | Mobile: [REDACTED] | Email: pam.darville@act.gov.au

Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 5 Canberra Nara Centre, 1 Constitution Avenue, Canberra City | GPO Box 158 Canberra ACT 2601 www.act.gov.au

From: [EPSD Government Services](#)
To: [Ridsdale, Janine](#)
Cc: [Kaucz, Alix](#)
Subject: TSY agreement - 19/111- Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Chang [SEC=UNCLASSIFIED, DLM=Sensitive: Cabinet]
Date: Thursday, 21 March 2019 10:10:51 AM
Attachments: [image001.png](#)
[image002.png](#)
[Attachment 1 - Cabinet Submission - exposure.obr](#)

UNCLASSIFIED Sensitive: Cabinet

Hi Janine

Good news from our TSY colleagues, please update the table on page 1 and the last section (financial impact) of the submission with TSY's agreement.

Kind regards

Cara
78449

From: Maclachlan, Hugh
Sent: Wednesday, 20 March 2019 6:19 PM
To: EPSD Government Services <EPSDGovernmentServices@act.gov.au>
Cc: Blount, Wilhelmina <Wilhelmina.Blount@act.gov.au>; Chadwick, Graham <Graham.Chadwick@act.gov.au>; Davies, Dean <Dean.Davies@act.gov.au>; Hoang, Alice <Alice.Hoang@act.gov.au>
Subject: FW: Seeking TSY agreement - 19/111- Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Chang [SEC=UNCLASSIFIED, DLM=Sensitive: Cabinet]

Hi Cara,

Thanks for the opportunity to review this Cab Sub.

Treasury has nil comment on this submission at this time and agrees the nil financial impacts.

Cheers
Hugh.

From: Hoang, Alice
Sent: Wednesday, 20 March 2019 5:01 PM
To: Maclachlan, Hugh <Hugh.Maclachlan@act.gov.au>
Cc: Callaghan, Thomas <Thomas.Callaghan@act.gov.au>; Chadwick, Graham <Graham.Chadwick@act.gov.au>; Davies, Dean <Dean.Davies@act.gov.au>
Subject: RE: Seeking TSY agreement - 19/111- Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Chang [SEC=UNCLASSIFIED, DLM=Sensitive: Cabinet]

Hi Hugh

I have reviewed this Cab Sub on *Government Response to the Standing Committee on Planning and Urban Renewal Report No. 7: Draft variation to the Territory Plan No. 350: Changes to the definition of 'single dwelling block'* and suggest 'nil comment'.

Comments

- Nil.

Background

- The Cab sub is seeking Cabinet agreement to the *Government Response to the Standing Committee on Planning and Urban Renewal Report No. 7: Draft variation to the Territory Plan No. 350: Changes to the definition of 'single dwelling block'*.
- Residential leases on particular blocks issued in late 1960s and early 1970s do not specify or limit the number dwellings permitted on the block, which meant that two dwellings (one house and one small flat) were permitted to be built on these type of blocks.
- The current definition of 'single dwelling block' in the Territory Plan does not apply to these blocks.
- When multi-unit residential buildings are proposed for redevelopment on these blocks, some provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan no longer applies.
 - The MUHDC in the Territory Plan limits the bulk and scale of a development.
 - This has resulted in built forms (what the building looks like, how tall it is, how much of the lot it takes up etc.) to be inconsistent to the existing suburban residential character, resulting in an inappropriate scale of development.
- The Draft Variation to the Territory Plan No. 350 is proposed to address unintended development outcomes by changing the title of the definition of 'single dwelling block' to 'standard block'.
- This Cab Sub states that this change will compel multi-unit redevelopment proposals for these original dual occupancy blocks to adhere to the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the suburban streetscape character.

Happy to discuss if you have any concerns.

Cheers

Alice

Alice Hoang | Analyst

Phone: (02) 6207 5262 | Email: alice.hoang@act.gov.au

L1, Canberra Nara Centre, 1 Constitution Avenue, Canberra City ACT 2601

Finance and Budget Group | Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: Maclachlan, Hugh

Sent: Wednesday, 20 March 2019 11:25 AM

To: Hoang, Alice <Alice.Hoang@act.gov.au>

Cc: Callaghan, Thomas <Thomas.Callaghan@act.gov.au>; Chadwick, Graham

<Graham.Chadwick@act.gov.au>; Davies, Dean <Dean.Davies@act.gov.au>

Subject: FW: Seeking TSY agreement - 19/111- Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Chang [SEC=UNCLASSIFIED, DLM=Sensitive: Cabinet]

FYI Alice – thanks for your help in reviewing this EPSDD Cab Sub.

If you like, we can call Janine together later so we can both get a better understanding.

Cheers
Hugh.

From: EPSD Government Services

Sent: Wednesday, 13 March 2019 11:30 AM

To: Nockels, Alexander <Alexander.Nockels@act.gov.au>; Maclachlan, Hugh <Hugh.Maclachlan@act.gov.au>

Cc: Brozic, Liana <Liana.Brozic@act.gov.au>; Cameron, Susan <Susan.Cameron@act.gov.au>; Cabinet Office <CabinetOffice@act.gov.au>; Ridsdale, Janine <Janine.Ridsdale@act.gov.au>

Subject: Seeking TSY agreement - 19/111- Government Response to Standing Committee on Planning and Urban Renewal - Report 7 - Draft Variation to the Territory Plan No 350: Changes to definition of 'single dwelling block'

UNCLASSIFIED Sensitive: Cabinet

Good morning Alex & Hugh

The submission is now available for your review (link attached). To meet the cabinet timeframes to commence the exposure circulation could we receive you advice by no later than **COB Wednesday 20 March?**

If you have any questions please contact Janine Ridsdale, Senior Planner, Territory Plan on 6205 4060.

Kind regards

Cara Weekes | a/g Cabinet Liaison Support Officer - Government Services

Phone: 02 6207 8449 | Email: [EPSDD Ministerials – Government Services](mailto:EPSDD_Ministerials – Government Services)

Engagement and Executive Support | Environment, Planning and Sustainable Development Directorate | **ACT**

Government

Level 3 South, Dame Pattie Menzies House, 16 Challis Street, Dickson | GPO Box 158 Canberra ACT 2601

www.environment.act.gov.au | www.planning.act.gov.au



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facebook.com/Environplan

Ministerial Information Brief Coversheet

MINISTER	Minister for Planning and Land Management - Mick Gentleman MLA
SUBJECT	Variation No. 350 - approval and tabling - July 2019
OBJECTIVE NUMBER	19/16907
CRITICAL DATE FOR MINISTER'S SIGNATURE*	Thursday, 25 July 2019

	Due Date	Signature	Date
Due to the Ministers Office			
Director-General			
Deputy Director-General	15/07/19	EGM Cleared	18/07/2019
Government Services	12/07/19	Lisa Sampson	10/07/2019
Executive Group Manager		Kathy Cusack	05/07/2019
Contact Officer: Janine Ridsdale	Telephone No: 54060		

<p>Further Action/Comment:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Signature</p>

**All briefs must list a critical date (ie when the Minister is required to sign, even if considered routine)*

**Environment, Planning and Sustainable
Development Directorate**

UNCLASSIFIED

To: Minister for Planning and Land Management

Tracking No.: 19/15389
16967

Date: 05/07/2019

From: Planning, Land and Building Policy Division

Subject: Variation to the Territory Plan No 350 - Changes to the definition of 'single dwelling block' – Approval and Tabling

Critical Date: 25/07/2019

Critical Reason: To enable the variation to be approved and thereafter tabled on 30 July 2019.

- DG .../.../...
- DDG, Land Strategy and the Environment .../.../...

Purpose

To:

1. Advise you of changes to the definition of 'single dwelling block' in Draft Territory Plan Variation No. 350 (DV350);
2. Seek your agreement to approve the amended Variation No 350 (V350); and
3. Seek your agreement to table V350 in the Legislative Assembly on 30 July 2019.

Recommendations

That you:

1. **Note** the Government response to the Standing Committee recommendations at Attachment A;

Noted / Please Discuss

2. **Agree** to the changes to the definition of 'single dwelling block' in V350 as set out in the attached final variation at Attachment B;

Agreed / Not Agreed / Please Discuss

3. **Sign** the Approval Instrument (Attachment C) approving V350; and

Signed / Not Signed / Please Discuss

UNCLASSIFIED

4. **Agree** to the tabling statement at Attachment D and table the variation in the Legislative Assembly on 30 July 2019.

Agreed / Not Agreed / Please Discuss

Mick Gentleman MLA



24/7/19

Minister's Office Feedback

Background

1. Draft Territory Plan Variation No. 350 (DV350) was prepared in response to concerns regarding inappropriate multi-unit redevelopment on certain residential blocks in some older Canberra suburbs.
2. The leases for these blocks did not specify the number of dwellings permitted and therefore are not captured in the current definition of 'single dwelling block'. This has resulted in proposals and multi-unit developments not in keeping with the surrounding predominantly low density and single dwelling housing streetscape character.
3. The draft variation has addressed this situation by amending the definition and changing the title so that these blocks are captured in the definition.
4. The definition of 'standard block' also excludes those leases which explicitly permit multi-unit development (two or more dwellings) meaning that these types of blocks will not be inadvertently captured by the changes.
5. DV350 was referred to the Standing Committee on Planning and Urban Renewal (the Committee) on 11 September 2018. The Committee held an inquiry into DV350, and released a report containing three recommendations. All three recommendations in the report were agreed to with recommendation 3 requiring an amendment to DV350.
6. The Government's responses to the Committee's recommendations were provided to Cabinet for consideration. The responses were agreed by Cabinet in May 2019, meaning the change to DV350 as noted in the response to recommendation 3 can be incorporated into the draft variation.
7. Under section 76(2)(b) of the *Planning and Development Act 2007* (the Act), changes to a recommended draft variation require a direction from the Minister. Under section 76(5)(b) of the Act you signed the direction Notifiable Instrument (NI) on 12 June 2019 (Ministerial Brief 19/15389) and it was published on the Legislation Register on 20 June 2019.
8. Section 1.7 of the final variation at Attachment B shows the EPSDD's compliance with your direction in accordance with section 78 (3)(a) and (b).

UNCLASSIFIED

Issues

9. The amendment to the draft variation resulting from the Committee's recommendation 3 is to reword the proposed definition of a '*standard block*' so that drafting errors are corrected.
10. The revised definition of '*standard block*' to address drafting errors is:
 - '...a block with one of the following characteristics:
 - a) originally leased or used for the purpose of one or two *dwellings* except where the original lease explicitly permits two dwellings
 - b) created by a *consolidation of blocks*, at least one of which is covered by a)
11. This correction to the definition will exclude blocks with original leases that explicitly permit multi-unit development (two or more dwellings).

Financial Implications

12. There are no financial impacts as Territory Plan variations are covered by base funding.

ConsultationInternal

13. The draft variation underwent internal consultation with the Environment, Planning and Sustainable Development Directorate's (EPSDD) Planning Delivery Division. This consultation took place prior to community consultation, in the preparation of responses to the Committee recommendations, and in the preparation of these further changes.
14. EPSDD Legal Services have reviewed the notifiable instrument. Legal Services have advised there is a drafting error in section 76 of the *Planning and Development Act 2007*, in relation to the Minister's powers following a response from the Standing Committee. A bill has been drafted to correct this error, which will not be in effect until late 2019. However, given the need to progress DV350, section 76 has been interpreted to give effect to its drafting intent.

Cross Directorate

15. This stage of the draft variation process did not include cross-Directorate consultation in formulating responses to the Committee's report as this was a matter for EPSDD to resolve.

External

16. The draft variation process included external public consultation during the mandatory 30-day consultation period. The Standing Committee inquiry and hearing process also included external consultation. The responses to the Committee's report have been addressed separately and were subject to review by Cabinet.

Benefits/Sensitivities

17. The correction of drafting errors in the definition of '*standard block*' as recommended by the Committee and directed by you will provide greater certainty to lessees with legitimate multi-unit development rights over their blocks.

From: [Kaucz, Alix](#)
To: [Ridsdale, Janine](#)
Subject: RE: Refining new definition of "standard block" [DLM=For-Official-Use-Only]
Date: Friday, 28 June 2019 2:47:46 PM

Agree to adding 'original' but not replacing 'permits' to 'requires'

From: Ridsdale, Janine
Sent: Friday, 28 June 2019 1:58 PM
To: Kaucz, Alix <Alix.Kaucz@act.gov.au>
Subject: FW: Refining new definition of "standard block" [DLM=For-Official-Use-Only]
Importance: High

FYI

From: Myers, Rhonda
Sent: Friday, 28 June 2019 1:53 PM
To: Ridsdale, Janine <Janine.Ridsdale@act.gov.au>
Cc: Teasdale, Jonathan <Jonathan.Teasdale@act.gov.au>; Sare, Irma <Irma.Sare@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>
Subject: FW: Refining new definition of "standard block" [DLM=For-Official-Use-Only]

Hi Janine,

Here's my comments...

I still think the definition should read

'Standard block means a block with one of the following characteristics:

- a) originally leased or used for the purpose of one or two *dwelling*s except where the **original** lease explicitly **permits requires** two *dwelling*s
- b) created by a *consolidation* of *blocks*, at least one of which is covered by a)

The difference in my comments would be significant if the above definition were in place. DA Leasing varies leasing to expressly permit a maximum number of *dwelling*s to allow for application for unit title. Therefore, many variations to permit a unit title could be impacted by this definition.

☺ Rhonda

From: Ridsdale, Janine
Sent: Friday, 28 June 2019 1:24 PM
To: Thompson, Chris <Chris.Thompson@act.gov.au>; McFarlane, Trina <Trina.McFarlane@act.gov.au>; Hai, Helen <Helen.Hai@act.gov.au>; Sayers, Caroline <Caroline.Sayers@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>; Bennett, JamesP <JamesP.Bennett@act.gov.au>; Teasdale, Jonathan <Jonathan.Teasdale@act.gov.au>; Sare, Irma <Irma.Sare@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>; Myers, Rhonda <Rhonda.Myers@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; Davies, Richard <Richard.Davies@act.gov.au>

Cc: Kaucz, Alix <Alix.Kaucz@act.gov.au>; Terrplan <Terrplan@act.gov.au>

Subject: FW: Refining new definition of "standard block" [DLM=For-Official-Use-Only]

Dear all

Please assess the scenarios against the proposed new definition:

'Standard block means a block with one of the following characteristics:

- a) originally leased or used for the purpose of one or two *dwelling*s except where the lease explicitly permits two dwellings
- b) created by a *consolidation* of *blocks*, at least one of which is covered by a)

From: Ridsdale, Janine

Sent: Friday, 28 June 2019 12:54 PM

To: Thompson, Chris <Chris.Thompson@act.gov.au>; McFarlane, Trina <Trina.McFarlane@act.gov.au>; Hai, Helen <Helen.Hai@act.gov.au>; Sayers, Caroline <Caroline.Sayers@act.gov.au>; Gell, Chris <Chris.Gell@act.gov.au>; Bennett, JamesP <JamesP.Bennett@act.gov.au>; Teasdale, Jonathan <Jonathan.Teasdale@act.gov.au>; Sare, Irma <Irma.Sare@act.gov.au>; Walker, Karen <Karen.Walker@act.gov.au>; Myers, Rhonda <Rhonda.Myers@act.gov.au>; Boraiah, Thara <Thara.Boraiah@act.gov.au>; Cilliers, George <George.Cilliers@act.gov.au>; Jamaly, Rumana <Rumana.Jamaly@act.gov.au>

Cc: Kaucz, Alix <Alix.Kaucz@act.gov.au>; Terrplan <Terrplan@act.gov.au>

Subject: Refining new definition of "standard block" [DLM=For-Official-Use-Only]

Importance: High

Dear All,

The Territory Plan Section is testing the proposed definition of "standard block" to go into the final version of Draft Variation no 350 which TPS is aiming to be approved by the Minister and tabled in July.

We are testing the new definition against some scenarios to get feedback in order to ensure that the proposed definition captures the targeted blocks (and excludes others that are meant to be treated as non-standard blocks).

Please can you consider the various **scenarios** below and allocate them to the following categories:

STANDARD BLOCK *	NON-STANDARD BLOCK **	UNSURE
<ul style="list-style-type: none"> • Single dwelling 	<ul style="list-style-type: none"> • Single dwelling – but where lease allows max of 2 dwellings if 	

	<p>permitted by the Territory Plan</p> <p>Would be a standard block if definition was as per the top of my email.</p>	
<ul style="list-style-type: none"> • Single dwelling +small granny flat (to present as single dwelling to the street) 	<ul style="list-style-type: none"> • Multi-unit development in RZ1 where provided for in the lease (townhouses) <p>Provided it is for 3 or more dwellings.</p>	
	<ul style="list-style-type: none"> • Potential for two dwellings (single dwelling + lease permits up to two dwellings) <p>Would be a standard block if definition was as per the top of my email.</p>	
	<ul style="list-style-type: none"> • Potential for three dwellings (single dwelling + lease permits up to three dwellings) <p>Would be a standard block if definition was as per the top of my email.</p>	
	<ul style="list-style-type: none"> • New block in new subdivision with two dwellings required (surveillance blocks) 	

*Standard block = Restrictions on plot ratio, max number of dwellings; unit titling in RZ1 etc (see MUHDC)

** Non-standard block = no plot ratio, no limit on dwellings; can unit title in RZ1 etc (see MUHDC)

SCENARIOS

- Single dwelling
- Single dwelling +small granny flat (to present as single dwelling to the street)
- Single dwelling – but where lease allows max of 2 dwellings if permitted by the Territory Plan
- Multi-unit development in RZ1 where provided for in the lease (townhouses)
- Potential for two dwellings (single dwelling + lease permits up to two dwellings)
- Potential for three dwellings (single dwelling + lease permits up to three dwellings)
- New block in new subdivision with two dwellings required (surveillance blocks)

Many thanks for your assistance in this matter. Your prompt response and any comments would be most appreciated. Individual responses would be preferred (to get as wide a response as possible).

Regards

Janine Ridsdale | Territory Plan Section

Phone 02 6205 4060

Planning Land and Building Policy | Environment Planning and Sustainable Development Directorate | **ACT Government**

Dame Pattie Menzies House, Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.environment.act.gov.au
9:30am-2:30pm Mon-Fri

WOODHAVEN INVESTMENTS PTY LTD

ABN 85 998 318 231

6th August 2018

Mr. Ben Ponton
Director-General
Environment, Planning and
Sustainable Development Directorate
By Email: Ben.Ponton@act.gov.au

Dear Mr Ponton

TERRITORY PLAN VARIATION 350 – CLARIFICATION OF INTENTION

I am writing to you to request your urgent intervention into a situation that appears to have arisen as an unintended consequence of Territory Plan Variation 350 (DV 350).

Woodhaven Investments Pty Ltd has just completed the development of Ginninderra Estate (Blocks 3-5 Section 118 Holt) and has been issued with consequent leases for the land in accordance with the numbers of dwellings set out in the approved Estate Development Plan.

Included in the consequent leases are leases with purpose clauses that provide for the erection of two dwellings on the land. These blocks are:

Block 1 Section 124;
Block 18 Section 127;
Block 21 Section 128.

The subject land in each case is designated as “MU2” – Not “single dwelling” or “standard dwelling”. Clearly, this land is not caught by DV 350 which is intended to adjust the development codes to deal with the redevelopment of some single blocks in older suburbs where multi- unit development could adversely impact on the urban design character of the suburb. In the case of Ginninderra Estate, the urban design encompassed these new two dwelling developments on specific blocks within the estate under the Approved EDP.

Purchasers of these blocks have sought independent planning opinion as to whether these blocks are caught by DV 350. The planning opinion was that they were in fact caught by DV 350, although this is clearly incorrect. However, as a result of that opinion, the purchasers are unable to obtain finance on the land, their financiers apparently taking the view that the land use is unclear, hence the value of the land cannot be ascertained.

Woodhaven has sought clarification of the matter through Deed Management who in turn referred the matter to the Territory Plan Section. Woodhaven has been advised as follows:

“Thank you for your enquiry surrounding the interpretation of the noted blocks within the Holt Section 99 Block 16 Estate.

(Note: Ginninderra Estate was originally known as Block 16 Section 99 Holt and is referred to as such in the Deed of Agreement).

The Blocks noted are considered a 'standard block' under the current Territory Plan as recently modified by DV350, which has been given interim effect. The draft Variation is subject to further ACT Government processes prior to these changes being fully ratified in the Territory Plan. The Territory has further opportunities within this process to amend/clarify the interpretation of changes proposed to the Territory Plan. The Territory Plan team will consider this matter in conjunction with other submissions made as part of this process, with a view to making any identified changes required in due course.

Woodhaven considers this advice to be incorrect. No explanation is given of why the subject land in Ginninderra Estate is considered to be standard blocks, notwithstanding that:

- the development approval specifies that the land is multi-unit land for two dwellings;
- the Deed of Agreement describes the land as multi-unit; and,
- the purpose clause in each lease requires the erection of two dwellings on each block.

The definition of a 'standard block' is:

Standard block means a block with one of the following characteristics –
a) originally leased or used for the purpose of one or two dwellings
b) created by a consolidation of blocks, at least one of which was originally leased or used for the purpose of one or two dwellings.

The subject blocks were not '*originally used for the purpose of one or two dwellings*'. They are not blocks intended for redevelopment, nor is there an *option* to use them for either one or two dwellings. The purpose clause is specific – two dwellings, and the dwellings will be the original dwellings – not redevelopment of the land.

There is a further issue with the advice provided by the Territory Plan Section. Not to erect two dwellings on each block would be a breach of lease. It would appear that the Territory Plan advice was provided without a full understanding of the facts of the matter as set out above.

Woodhaven now seeks your assistance in providing an authoritative confirmation of the situation. The advice will be given to the purchasers to satisfy their financiers that the lease can be relied upon as a true statement of the contractual situation between the lessor and the lessee.

You will appreciate the urgency of the matter from the purchaser's viewpoint, and Woodhaven would be grateful for your earliest attention to the matter

Yours Faithfully,



DIRECTOR

CC: *By Email*
 Mr Bob Taylor
 Mr James Cargill
 Ms Sonya Clarkson



ACT
Government

Environment, Planning and
Sustainable Development

18/22838

[REDACTED]
Director
Woodhaven Investments Pty Ltd
PO Box 3285
BELCONNEN ACT 2617

[REDACTED]
Territory Plan Variation No. 350 – Clarification of intention

Thank you for your correspondence of 6 August 2018 and 16 August 2018 regarding the unintended consequence of draft variation to the Territory Plan No. 350 (DV350) for certain blocks in Ginninderra Estate.

I appreciate your concern and urgency to resolve this matter for the blocks in question.

Although currently these blocks would fall under the new definition of 'standard block' as proposed in DV350, the Environment, Planning and Sustainable Development Directorate (EPSDD) has investigated this matter and concurs that the leases over these blocks specifically exclude these blocks from being classified as standard blocks.

EPSDD proposes to adjust the definition of 'standard block' in DV350 to exclude blocks where the intention was specifically for multi-unit development of two dwellings where expressed in the lease. The recommended version of DV350 containing these revised changes is being prepared by EPSDD for referral to Minister Gentleman MLA, the Minister for Planning and Land Management. Once the Minister receives the recommended version containing the changes, the defined period of interim effect will restart and the revisions to the proposed definition will apply to development applications lodged on or after the date of the public availability notice.

EPSDD is dealing with this as a matter of priority and I am anticipating that the Minister will receive the documents by the end of the month.

Yours sincerely


Ben Ponton
Director-General

16.8.18

From: [Ponton, Ben](#)
To: [REDACTED]
Cc: [Taylor, Bob](#); [Cargill, James](#); [Clarkson, Sonja](#); [Paul Cohen](#); [Marcantonio, Laura](#); [Ives, Kieran](#); [Ryan Lee](#); [Brady, Erin](#); [Vest, Petra](#)
Subject: Re: TERRITORY PLAN VARIATION 350 – CLARIFICATION OF INTENTION re New Estates [SEC=UNCLASSIFIED]
Date: Thursday, 16 August 2018 7:03:16 AM

Dear [REDACTED]

Thank you for your further e-mail. I'll follow up with the team.

Yours sincerely

B

Ben Ponton | Director-General
Phone + 61 2 6207 8359
Environment, Planning and Sustainable Development Directorate | **ACT Government**
Level 3, 16 Challis Street, Dickson | GPO Box 158, Canberra ACT, 2602 |
www.environment.act.gov.au

On 16 Aug 2018, at 4:45 am, [REDACTED] wrote:

Good Morning Ben.

It is now 10 days since you responded to my email below, advising me that; *"a response will be provided soon"* - yet None has been forthcoming.

This matter is holding up the Settlement of multiple properties due to the uncertainty created by the Unintended consequences of TPV 350 regarding 3 Dual Occupancy blocks in Ginninderra Estate.

Can you, or the person handling the matter, provide me with an update on this matter by COB Today please.

Thanking you in anticipation.

Rgds, [REDACTED].

From: Ponton, Ben <Ben.Ponton@act.gov.au>
Sent: Monday, 6 August 2018 4:13:16 PM
To: [REDACTED]
Cc: Taylor, Bob; Cargill, James; Clarkson, Sonja; Paul Cohen; Marcantonio, Laura; Ives, Kieran
Subject: RE: TERRITORY PLAN VARIATION 350 – CLARIFICATION OF INTENTION re New Estates [SEC=UNCLASSIFIED]

Dear [REDACTED] – thank you for your e-mail, which is receiving attention. A response will be

provided soon.

Yours sincerely,

B

Ben Ponton | Director-General

Phone +61 2 6207 8359

Environment, Planning and Sustainable Development Directorate | **ACT Government**

Level 3, 16 Challis Street, Dickson | GPO Box 158 Canberra ACT 2602 | www.environment.act.gov.au

From: [REDACTED]
Sent: Monday, 6 August 2018 11:42 AM
To: Ponton, Ben <Ben.Ponton@act.gov.au>
Cc: Taylor, Bob <Bob.Taylor@act.gov.au>; Cargill, James <James.Cargill@act.gov.au>; Clarkson, Sonja <Sonja.Clarkson@act.gov.au>; [REDACTED]
Subject: TERRITORY PLAN VARIATION 350 – CLARIFICATION OF INTENTION re New Estates
Importance: High

Good Morning/Afternoon Ben.

Please see attached a letter in relation to the Unintended consequences of TPV 350 regarding 3 Dual Occupancy blocks in Ginninderra Estate, that we require your resolution of/on.

I look forward to your response to this matter in the near future.

Rgds, [REDACTED]

DIRECTOR

Woodhaven Investments (Developers of Ginninderra Estate)

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

From: [Ridsdale, Janine](#)
To: [REDACTED]
Cc: [Kaucz, Alix](#)
Subject: DV350 - response to enquiry
Date: Friday, 24 August 2018 12:41:58 PM

Dear [REDACTED]

I am responding to your email to Mr Ben Ponton on 17 August about the proposed changes to DV350 to address the situation regarding dual occupancy and surveillance blocks.

The Territory Plan section has been advised that the documentation is on its way to the Minister's office. We should have a better idea early next week on timing for the notification of the public availability notice on the Legislation Register, at which point DAs will be able to be lodged as the changes to the definition of 'standard block' will have interim effect.

We will advise you of this date as soon as it comes available.

Regards

Janine Ridsdale
Territory Plan Section
Planning Policy | EPSDD

From: [GENTLEMAN](#)
To: [EPSDD DLO](#)
Cc: [Thompson, Blair](#)
Subject: FW: Correspondence received from Joy Burch MLA on the 13/11/2018 [SEC=UNCLASSIFIED]
Date: Tuesday, 13 November 2018 12:13:48 PM
Attachments: [scan_natasha_apostoloski_2018-11-13-10-48-37.pdf](#)
[image003.jpg](#)
[image002.jpg](#)

Reply please Erica.

Thanks

Natasha Apostoloski | Office Manager

Office managers: Natasha Apostoloski (Mon-Wed), Eben Leifer (Thu-Fri)

Office of Mick Gentleman MLA

Member for Brindabella

Minister for the Environment and Heritage

Minister for Planning and Land Management

Minister for Police and Emergency Services

Minister assisting the Chief Minister on Advanced Technology and Space Industries

Manager for Government Business

t: 620 50218 | e: gentleman@act.gov.au



Please note that from 1 January 2018 ACT Government ministerial diaries are subject to publication on the ACT Government's open access website under section 23 of the *Freedom of Information Act 2016*.

From: GENTLEMAN

Sent: Tuesday, 13 November 2018 12:13 PM

To: GENTLEMAN <GENTLEMAN@act.gov.au>

Subject: Correspondence received from Joy Burch MLA on the 13/11/2018 [SEC=UNCLASSIFIED]

Natasha Apostoloski | Office Manager

Office managers: Natasha Apostoloski (Mon-Wed), Eben Leifer (Thu-Fri)

Office of Mick Gentleman MLA

Member for Brindabella

Minister for the Environment and Heritage

Minister for Planning and Land Management

Minister for Police and Emergency Services

Minister assisting the Chief Minister on Advanced Technology and Space Industries

Manager for Government Business

t: 620 50218 | e: gentleman@act.gov.au



Please note that from 1 January 2018 ACT Government ministerial diaries are subject to

publication on the ACT Government's open access website under section 23 of the *Freedom of Information Act 2016*.

RECEIVED
13/11/18**Joy Burch MLA**

MEMBER FOR BRINDABELLA

Mr Mick Gentleman
Minister for Minister for Planning and Land Management
Legislative of Assembly
London Circuit
CANBERRA ACT 2601

Dear Minister *Mick*

I write to you on behalf of [REDACTED] a resident of the Brindabella electorate who recently contacted me concerned by the impact of Draft Variation 350.

[REDACTED] has expressed her concerns that DV350 will negatively affect the value of her land. Could you please advise what impact these changes will have on land lease agreements that allowed dual occupancy prior to DV350, such as [REDACTED]

I have attached this correspondence for your timely review and response.

Thank you for your assistance with relation to this matter.

Yours sincerely,

Joy Burch
Joy Burch MLA
Member for Brindabella

12 November 2018

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0020 Fax: (02) 6205 0495 Email: BURCH@act.gov.au
Twitter: @JoyBurchMLA Facebook: www.facebook.com/joyburchmla



30-10-18

Ms Joy Burch
 Legislative Assembly for the ACT
 GPO Box 1020
 Canberra ACT 2601

Dear Ms Burch,

Re:- DV 350

I am writing to you regarding the proposed changes to some ACT crown leases under DV 350.

My understanding is that it is proposed that leases that allow "residences" - i.e. there is no actual stated restriction on the number of units that can be built on a single block - would be altered to permit just one residence per lease. I can appreciate the government's concern re such an open-ended lease whereby some owners may take advantage of such a provision and construct multiple dwellings on a single block, and thus impinge on the rights, privacy and enjoyment of neighbours.

However, my lease ([redacted]), and perhaps those of others, specifies dual occupancy; one only additional building may be constructed, or to quote the lease, "no more than two buildings (other than outbuildings)". My home is an ex-government house and the houses around me are still government owned and let. Only one other house - opposite to mine; a

battleaxe block - is privately owned. My lease is the only one in the street that allows dual occupancy.

My concern stems from a basis of fairness, justice and equality. Many, if not all, of the "Mr. Fluffy" leases bought by the government specified only one residence could be built on each block. Yet the government changed the conditions of those leases to enable developers to build two units on each piece of land. Of course, this makes economic sense, especially if the government is aiming for higher density and encouraging supply. In my case though, the lease actually allows for two residences and now the government intends to take away my right and that of others, to build a second house. It does not seem logical on any grounds. The dual occupancy would bring in revenue for the government either through a landlord tax or other additional fees and expenditure.

Another concern is about the notification of the proposed change. Not everybody reads "The Canberra Times", the media is not obliged to take up an issue about which it has been notified, thus restricting public awareness, and not everyone has access to a computer to constantly monitor government announcements. Perhaps a simple letter in a rates notice to those people affected would have allowed others to voice their concerns. I was made aware of the proposed changes by a prospective buyer whose architect notified him of DV350. If architects were informed, as well as, I believe the RBA, why not owners? It doesn't seem right, open or transparent. In addition, I cannot understand why the proposed changes are now in effect, given that the Legislative Assembly's Standing Committee on Planning and Urban Renewal has not completed its investigation.

I realise it is difficult to take individual situations into account but perhaps there are other cases like mine. My husband and I are in our seventies and we had hoped to sell our home and move closer to our children and the Canberra hospital. Because of our age and our low income of approximately \$50,000 per year, we are unable to borrow and the additional value of my lease, based on a second residence being allowed, would better enable us to sell and move. We had waited, quite deliberately, until this time in our lives to access the potential of the block.

I am hoping that in the Committee's recommendations there may be a clause that in effect, differentiates between the "open-ended" provision in some leases and those leases that are quite specific in the number - eg. "no more than two buildings" - of residences the lease allows. Perhaps there could be an exclusion clause in the proposed legislation to allow the latter type of leases to remain as they are.

As my member for Bundabella, I would ask you to bring my concerns to the attention of the Legislative Assembly's Committee on Planning and Urban Renewal which I believe is a parliamentary and not a government committee. I would really appreciate your assistance in this matter and thank you for your consideration.

Yours faithfully


From: [GENTLEMAN](#)
To: [BURCH](#)
Subject: Correspondence from Mick Gentleman MLA [SEC=UNCLASSIFIED]
Date: Monday, 17 December 2018 2:00:50 PM
Attachments: [20181217101126921.pdf](#)
[image003.jpg](#)

Dear Ms Burch,

Please find attached correspondence from Mick Gentleman MLA - Minister for Planning and Land Management.

Kind regards,

Natasha Apostoloski | Office Manager

Office managers: Natasha Apostoloski (Mon-Wed), Eben Leifer (Thu-Fri)

Office of Mick Gentleman MLA

Member for Brindabella

Minister for the Environment and Heritage

Minister for Planning and Land Management

Minister for Police and Emergency Services

Minister assisting the Chief Minister on Advanced Technology and Space Industries

Manager for Government Business

t: 620 50218 | e: gentleman@act.gov.au



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Minister for the Environment and Heritage
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister assisting the Chief Minister on
Advanced Technology and Space Industries
Manager of Government Business
Member for Brindabella

18/33684

Ms Joy Burch MLA
Member for Brindabella
Joy.Burch@parliament.act.gov.au

Dear Ms Burch *Joy*

Thank you for your letter of 12 November 2018 on behalf of [REDACTED] a resident of the Brindabella electorate who is concerned about the impact of Draft Variation to the Territory Plan No. 350 (DV350). I apologise for the delay in responding to you.

DV350 was prepared in response to inappropriate multi-unit 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 originally developed in the late 1960s and early 1970s. As a result, some of the restrictions on development in the Multi-Unit Housing Development Code (MUHDC) that apply to the neighbouring blocks in the same zone do not apply to these particular blocks. This has led to developments in these areas that are contrary to the surrounding low density suburban and streetscape character.

As this was never the intention of the 'single dwelling block' definition, DV350 proposes to adjust the wording to clarify the number of dwellings that can be built on these blocks to recognise and include these original dual occupancy circumstances. It is also proposed to change the name of the definition to refer to a 'standard block' as this also avoids the confusion around the terminology where one or two dwellings can be permitted on a block that is used for single dwelling housing.

A consequence of the change has been to inadvertently capture blocks like [REDACTED] which specifically allow for two dwellings in the lease, but were originally used for one dwelling. I understand that [REDACTED] has asked you to raise her concerns with the Standing Committee on Planning and Urban Renewal and I will be supporting any recommendation by the Committee that the definition be adjusted prior to proceeding with the variation to ensure that hers and other leases that include these clauses are not adversely affected.



Thank you for raising the concerns of your constituent with me. I have also written in [REDACTED] directly. I trust this information is of assistance.

Yours sincerely



Mick Gentleman MLA
Minister for Planning and Land Management

17/12/18



Minister for the Environment and Heritage
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister assisting the Chief Minister on
Advanced Technology and Space Industries
Manager of Government Business
Member for Brindabella

Obj # 18/33684

Dear [REDACTED]

Thank you for your follow-up correspondence of 21 December 2018 about DV 350. I am glad that I was able to assist you and alleviate the concerns you had. It is important as a government minister to always attempt to help those who you represent and I am happy that I was in a position to do so in this case.

If in future, you have any further issues that my office may assist with please do not hesitate to get in contact.

Yours sincerely

Mick Gentleman MLA
Minister for Planning and Land Management

9/1/19





Minister for the Environment and Heritage
Minister for Planning and Land Management
Minister for Police and Emergency Services
Minister assisting the Chief Minister on
Advanced Technology and Space Industries
Manager of Government Business
Member for Brindabella

18/33684



Dear [Redacted]

Thank you for your letter of 30 October 2018 to Ms Joy Burch, MLA, Member for Brindabella, about your concerns regarding the impact of Draft Variation to the Territory Plan No 350 (DV350) on your property. Minister Burch has referred your letter to me as responsibility for this matter falls within my portfolio. I apologise for the delay in responding to you.

DV350 was prepared in response to inappropriate multi-unit 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 originally developed in the late 1960s and early 1970s. As a result, some of the restrictions on development in the Multi-Unit Housing Development Code (MUHDC) that apply to the neighbouring blocks in the same zone do not apply to these particular blocks. This has led to developments in these areas that are contrary to the surrounding low density suburban and streetscape character.

As this was never the intention of the 'single dwelling block' definition, DV350 proposes to adjust the wording to clarify the number of dwellings that can be built on these blocks to recognise and include these original dual occupancy circumstances. It is also proposed to change the name of the definition to refer to a 'standard block' as this also avoids the confusion around the terminology where one or two dwellings can be permitted on a block that is used for single dwelling housing.

DV350 was released with interim effect without prior consultation as a temporary measure to prevent development applications being received on these blocks for redevelopment that did not support or complement the existing density and character of the older suburbs in which they are located. I have not approved the draft variation as yet, so these changes have not been formally incorporated into the Territory Plan.

ACT Legislative Assembly

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@GENTLEMANMick



MickGentleman



A consequence of the change has been to inadvertently capture blocks like yours which specifically allow for two dwellings in the lease, but were originally used for one dwelling. I will be supporting any recommendation by the Committee that the definition be adjusted prior to proceeding with the variation, to ensure that yours and other leases that include these clauses do not continue to be adversely affected as was unforeseeably the case.

Thank you for raising your concerns with me. I trust this information is of assistance.

Yours sincerely



Mick Gentleman MLA
Minister for Planning and Land Management

17/12/08

From: [Terrplan](#)
To: [Terrplan](#)
Subject: Public availability notice - DV350 - Changes to the definition of "single dwelling block" [SEC=UNCLASSIFIED]
Date: Friday, 7 September 2018 1 52:00 PM

Draft plan variation No 350 – Changes to the definition of 'single dwelling block' (DV350) has been recommended to the Minister for Planning in accordance with part 5.3 of the *Planning and Development Act 2007* (the Act).

The recommended DV350 and report on consultation are available for public inspection at:

- http://www.planning.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan/recommended_final_variations and
- Access Canberra, Environment, Planning and Sustainable Development Directorate (EPSDD) Shopfront, Ground Floor South, Dame Pattie Menzies House, 16 Challis Street, Dickson, Monday to Friday (except public holidays) between 8:30am and 4:30pm.

Section 72 of the Act applies to DV350 and therefore it has interim effect. The proposed Territory plan provisions will apply while the Draft Variation remains in draft form.

Territory Plan Section

Email: terrplan@act.gov.au

Planning Policy | Environment, Planning and Sustainable Development Directorate | ACT Government

Dame Pattie Menzies House, 16 Challis Street, Dickson | GPO Box 158 Canberra ACT 2601 | www.planning.act.gov.au