



Inner South Canberra Community Council

Territory Plan Section
Environment, Planning
and Sustainable Development Directorate
GPO Box 158
CANBERRA ACT 2601
Terrplan@act.gov.au

DRAFT PLAN VARIATION NO 352 – CHANGES TO VARIOUS DEVELOPMENT TABLES, CODES AND DEFINITIONS (DV352)

The Inner South Canberra Community Council (ISCCC) welcomes the opportunity to comment on Draft Plan Variation No 352 – Changes to Various Development Tables, Codes and Definitions (DV352).

The ISCCC highlights in particular the proposal to remove references to Neighbourhood Plans from the Commercial Zones Development Code and the Parks and Recreation Zones Development Code (see Section 15 below). This continues the transition away from Neighbourhood Plans. Yet this is being done without a parallel process of incorporating statements of desired character into suburb precinct codes in consultation with the community.

In 2013, the ACT Government accepted Recommendation 11 of the Assembly’s Planning Committee on Draft Variation 306 to the Territory Plan, which stated: “community consultation on precinct codes should commence as soon as possible.”

The Government went on to make the commitment that: “The next stage of this process will be to incorporate statements of desired character into suburb precinct codes, where appropriate. The community will be consulted as part of the amendment process.” To our knowledge, that has not happened. It is important that the Government honour this commitment.

On a practical note, the page numbers in the DV352 document appear to repeat in places. Where page numbers are repeated the second occurrence of a page number is marked with a superscript 1 (eg p. 2¹ means the second page 2 in the DV352 document).

1. Removal of Public Land Reserve Overlay on part block 510 Stromlo p. 4

While it appears not inappropriate to change the zoning of this block, now owned by Greenhills, the ISCCC wonders if the transfer with the zoning unamended reduced the price paid by Greenhills. We do not seek to have the original transaction unwound but it might be appropriate to remove the possibility of some undue windfall profit from this change in zoning. This has implications for other areas with public land reserve overlays in the ACT.

Consequently we suggest that the Government impose a condition on the lease requiring the surrender of the land parcel back to the Government if some variation to the lease purpose is sought at some future date. If it appears that the change in lease purpose is appropriate and

no windfall profits are being made there would be nothing to stop the Government re granting the land back to the then owner of the Greenhills property.

2. Animal care facilities permitted in industrial zones p. 6

The ISCCC supports the possible establishment of animal care facilities in Industrial zones.

The ISCCC consequently supports amendment of the Industrial Zones Development Code and the Lease Variation General Code to require that any Animal Care Facility to be established in an Industrial Zone have a suitable Noise Management Plan (R34A) and an appropriate Emergency Management Plan. We note that the requirement for an Emergency Management Plan does not appear to be a Rule. Is this an oversight?

The ISCCC would not wish to see any such animal care facilities approved until Transport Canberra and City Services (TCCS) has completed the mooted Code of Practice under the Animal Welfare Act 1992 to provide guidance on the minimum standards of accommodation, care and management at an animal care facility, including hygiene, waste, noise, health, transport, and exercise.

3. Child care centres prohibited in industrial zones p. 7

While the ISCCC shares EPSDD's concerns that children not be exposed to hazards in industrial zone, we also recognise the need for appropriate childcare to be available for those who work in industrial zones. We note that childcare facilities already exist in Maryborough and Cessnock streets in Fyshwick.

Rather than banning child care facilities from all industrially zoned areas, perhaps it would be worth considering banning childcare facilities from only IZ1, while leaving this as a possible use in IZ2. If this approach were to be adopted there might be a need to reconsider some Industrial zoning to ensure that there was always some IZ2 land suitable for a child care facility within reasonable distance of all IZ1 areas.

The ISCCC considers it important that the Territory Plan permit adequate childcare to be provided for those working in Industrial Zones.

The ISCCC recognises that a consequence of this policy might be that development approval might have to be refused to facilities that produce noxious, hazardous or carcinogenic fumes or wastes. Even in the absence of childcare facilities, protection of the health and safety of people working in or visiting those zones should be a vital consideration.

4. Removal of mandatory minimum sized rooms in Boarding houses p. 10

The ISCCC finds it hard to contemplate how a bed, a wardrobe, a desk and a chair might be fitted into a room of less than 3m x 4m. Consequently any relaxation of the existing mandatory rules R25 for a boarding room and R26 for a communal room can only lead to undesirable overcrowding. The ISCCC opposes this change.

Some might claim that such a rule would reduce the availability of cheap accommodation at the bottom end of the market. If EPSDD really believes that demand at this level exists we suggest they introduce a new category of accommodation governed only by the proposed Criterion C25 (with possibly the removal of the requirement for space for a Desk) and C26.

5. Allowable encroachments: pergolas p. 10

We note that the Draft Variation does not give the text of the existing R16 on permitted Encroachments. This makes assessment of the proposed change more difficult than necessary.

The new provision “Encroachments into the minimum side or rear boundary setback...” needs slight redrafting to avoid the possibility that the “or” might be taken as an exclusive or permitting an encroachment only to the side setback or the rear setback, but not both for the one dwelling. Replace “or” with “and/or”

6. Noise affected blocks p. 11

No objections.

7. Water sensitive urban design p. 11

The ISCCC generally supports measures to reduce unnecessary water consumption and improve the use made of rainwater. We note that the requirement to install a pump will make the use of stored rainwater a more practical option, at least in some cases. However it would be of concern if switching all outdoor taps to low-pressure rain water tank supply, even when pumped, were to increase the danger of fire damage to property under some circumstances. Also, at least in some cases the pumps can be noisy both for residents and their neighbours.

The ISCCC also notes that the requirement to install a 5,000L tank and a pump can impose considerable additional costs on householders. It would be appropriate for a rigorous Cost Benefit Analysis to be undertaken to compare this approach with a suburb wide collective approach to the collection, storage and reuse of rainwater in new developments.

8. Rule R14 - Residential density - adaptable housing p. 13

The ISCCC welcomes the requirement that adaptable housing actually gets built rather than remaining latent in plans.

9. Site open space – RZ1 and RZ2 – Criterion C38(c) - stormwater runoff p.13

We note that with Rules R86 to R89 dealing with Water Sensitive Urban Design, only Rules R87 to R89 deal with Stormwater runoff, and none of these three rules apply to blocks smaller than 2,000m², meaning that the vast majority of Canberra blocks are not subject to any rules about stormwater runoff. Under these circumstances we believe removal of the provision in C38 requiring that open space provide for adequate provision for storm water infiltration cannot be justified and the Criterion should be retained. Should EPSDD feel that such a rule be more appropriately located under *Element 8: Environment*, then the ISCCC would encourage the drafting and insertion of a new rule (perhaps R86A) with the same policy intent as Criterion C38(c) in that part of the rules.

Issues such as this suggest that there could well be benefit in a fundamental reconsideration of the purpose and function of the plot ratio rules, and whether these are now an effective or appropriate policy tool. Perhaps these policy objectives could be better achieved by plot permeability requirements.

10. Rule R42 - Courtyard wall setbacks p.14

The ISCCC welcomes this new formulation of R42 in relation to RZ1 and RZ2 dwellings. However, we believe that the new Rule R42 should be mandatory, and that the availability of Criterion C42 will encourage architects to continue to attempt to locate courtyard walls virtually on the property boundary. Consequently the ISCCC recommends the removal of C42.

11. Courtyard walls – Rule R42b) i) – principal private open space at ground floor p. 14

The ISCCC supports the clarification in Rule R42A(b)(i) of the circumstances under which a courtyard wall might be located forward of the building line in zones RZ3, RZ4, and RZ5 in the proposed new Rule R42A.

12. Privacy and overlooking Rules R59 and R60 and Criteria C59 and C60 p. 15

The ISCCC has no problems with the proposed clarifications to Rules R59 and R60.

We note that there might be unintended consequences flowing from the proposal to add a provision that “Evidence is provided that...” at the beginnings of Criteria C59 and C60. The ISCCC hopes that the same standard of proof is required in relation to acceptance of compliance with any Criterion. However, when the matter is considered legally, the absence of this formula before any other Criteria might be taken as indicating that no such test need or should be applied to any other Criterion. In other words these are to be the only Criteria where evidence of compliance is required. The consequence would be that all other Criteria must be accepted merely on the basis of an assertion of compliance by the proponent. The ISCCC has doubts if this is the outcome that EPSDD wishes to achieve.

The ISCCC suggests that this problem might be avoided if there was a rule at the beginning of this Code and other planning Codes to the effect that “Where a proponent wishes to assert that a proposal complies with a Criterion rather than a Rule, evidence of this claim must be provided.”

13. Principal private open space – criterion C61 p. 16

The ISCCC is opposed to the removal of “*proportionate*” from this Criterion, which we note while being subjective, is more structured than the proposed subjective replacement “*suitable*”. At least *proportionate* is to be determined by reference to the size of the dwelling.

Why is this subjective term, out of what must be many thousands of such subjective terms, been chosen for rectification? The ISCCC has issues with the heavy reliance on subjective terms in the various Planning Codes, as these can as the explanation notes “vary significantly in application and interpretation”. However, if this problem is acknowledged, the solution is to significantly reduce the reliance on subjective terms rather than just removing one occurrence.

The ISCCC would be most happy to be part of a Working Group charged with rewriting the Planning Codes to reduce subjective language to the minimum possible, provided some

guarantee was provided that the Government would act on the outcome so that the large effort involved was not wasted.

14. Noise affected blocks – rule R67 p.16

The ISCCC has no difficulties associated with this proposed change.

15. Remove references to Neighbourhood Plans p. 17

The ISCCC notes the proposal to remove references to Neighbourhood Plans from the Commercial Zones Development Code and the Parks and Recreation Zones Development Code. We also note that references to Neighbourhood Plans were removed from the relevant housing codes by Variation 306 in 2013. We note too that at the time of their removal assurances were given to community groups that the relevant features of Neighbourhood Plans, where these existed, would be incorporated into Precinct Codes, but not the slightest effort has been made to comply with this assurance. EPSDD claims that it is impossible to translate the content of Neighbourhood Plans into Precinct Codes. This might be the case, but such a claim would be considerably more convincing if any such effort had been made. The entire exercise risks being seen by the community as the breaking of a Government commitment.

16. Additional merit track development - Hackett Precinct Map p. 17

The ISCCC understands that the proposal here is to change the permitted uses under the PRZ1 Urban Open Space zoning of the block to permit the former Girl Guides Hall as a Place of Worship. While this would solve what is only a minor problem for this religious group currently using the hall for this purpose, the ISCCC has concerns that this might set a precedent for the possible future alienation of other PRZ1 sites elsewhere in Canberra. Noting that Church sites are normally zoned CF Community Facility it is not clear why a zoning change to CF zoning is not the preferred solution to this case.

The ISCCC strongly recommends that the zoning of the former Girl Guides Hall be changed from PRZ1 to CF, rather than changing what is a permitted development in PRZ1.

Whatever Zoning is applied the ISCCC believes that a clause should be inserted into the lease providing that if a subsequent change to the lease purpose clause is sought then the lease must be surrendered back to the Government (which would remain free to re-grant the lease at such a cost as was felt appropriate under the future circumstances).

17. Detached house and attached house p. 19

The ISCCC has no trouble with the proposed definitions.

18. Minor use – shared areas of Community Title developments p. 19

The ISCCC has no trouble with the proposed definition.

19. Building line p. 1¹

The ISCCC supports development of a new definition of Building line. However the proposed definition appears to be mainly devoted to defining what is or is not part of a building. Perhaps it would be simpler (and more helpful to those unfamiliar with the Territory Plan) to move these elements into the definition of Building, rather than leaving them in the definition of building line. At present one has to read the definition of building line to learn what kind of terrace, porch, landing, deck, or verandah is or is not part of a building, which in turn impacts on determination of the gross floor area for the plot ratio.

Again this raises the issue of the effectiveness of the current definition of plot ratio and the need for some reconsideration of this issue.

20. Datum ground level and Natural ground level p. 1¹

The ISCCC supports the replacement of Natural ground level with the measurable Datum ground level.

21. Front boundary, side boundary, rear boundary p. 2¹

The ISCCC supports the new definition of side boundary and the proposed definition of rear boundary.

We note that an alternative approach would be to define a rear boundary as that boundary other than the front boundary which is closest to parallel to the front boundary. Side boundary would then be any boundary that was not the front boundary or the rear boundary. The ISCCC would regard this approach as equally satisfactory.

22. Habitable room p. 4¹

The ISCCC supports the proposed definition of habitable room.

23. Setback p. 4¹

The ISCCC has no difficulties with the proposed definition of Setback but recommends that EPD consider the following: “**Setback** means the horizontal distance between a *block* boundary and the outside face of any *building* on the block”, and then defining Building to include the elements subsequently listed. This would have the advantage that one would not have to consult the definition of setback to determine what constituted part of a building, which as noted above has impacts in the determination of the plot ratio.

Yours sincerely



Marea Fatseas
Chair
ISCCC
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