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Territory Plan Comments

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Environment and Sustainable Development Directorate

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Dear ESDD

TECHNICAL AMENDMENT 2013 -12

We are writing to express our concern about some of the recent changes mooted in Technical Amendment 2013-12; in particular, those relating to solar envelopes and apparent sun angles, through the use of a Technical Amendment.

Variation 306 was approved by the Assembly after a long and thorough period of consultation and consideration by the ACT community and the Legislative Assembly's Planning Committee. The changes proposed are not small tweaks that are "*consistent with the policy purpose and policy framework of the code*" (as stated in the Planning and Development Act 2007). They involve major changes that are inconsistent with the objectives in all the residential codes as far as promoting ***good solar access*** and ***energy efficiency and conservation*** are concerned.

Furthermore, it is hard to discern the policy urgency behind this proposal that requires its implementation in such haste. Variation 306 came into effect on 5 July 2013, only slightly more than four months ago. For legislation to be broadly deemed a failure after such a short period of time should have required a large body of new evidence to become apparent. ***No evidence has been provided to support the need for these changes at this time.***

At the very least we would have expected any major changes like these to be referred to the Assembly's Standing Committee on Planning, Environment and Municipal Services. A major change in the Territory Plan that has just been approved by the Assembly should go back to the Assembly for consideration, particularly as no argument for the proposed reversal has been made beyond the bald assertion that the provision was not considered to be resulting in the intended outcome.

Our comments on some of the proposals are given below.

Solar Envelope and Apparent Sun Angles

The GNCA is very concerned about proposals to water down the recently introduced solar access provisions, and also at attempts to restrict the concept of "northern boundary" so as to result in a large number of Canberra blocks no longer having a northern boundary. This would have a serious impact on housing in the Inner South.

On p17 and at p34 of the Technical Amendment it is proposed to repeal the definition of northern boundary in the Single Dwelling Housing Development Code (SDHDC) and the Multi-Unit Housing Development Code (MUHDC) respectively as inserted by Variation 306 and to remove references to sun angles for blocks with boundaries facing more than 20° west of north or 30° east of north. ESDD justifies this proposal by asserting that “it is considered that the current definition of *northern* boundary is not resulting in the intended outcome”. This is hardly a robust argument to justify the change.

The proposed new Table 1B on p17 of the Amendment does not appear to recognise northern boundaries on those properties whose northern boundaries face more than 30° east of north, or 20° west of north. If we make the assumption that Canberra properties are oriented at random, this change will deprive some 40/90th or 44.5% of Canberra property owners of their northern boundary, and expose them to the risk of overshadowing. In the area represented by the Griffith Narrabundah Community Association for instance, the mooted changes would result in the stripping of solar access provisions from residents of Allen St, Bannister Gardens, Bremer St, Hovell St, Landsborough St, Lefroy St, Lindsay St, Meehan Gardens, Mitchell St, Pullen St, Wild St, Wills St; most of Barrallier St, Blaxland Cr, Carstenz St, Finnis Cr, Frome St, Goyder St, Hacking Cr, Hann St, Hodgkinson St, La Perouse St, Lockyer St, Monaro Cr, Quiros St, Strzelecki Cr, Sprent St, Stuart St, Throsby Cr, Vaughan Gardens, and affect portions of a large number of other streets.

As Draft Variation 306 explained under the heading *Access to sunlight* it states:
“From 1 July 2010, amendments to the Building Code of Australia require all new detached dwellings to achieve at least the equivalent of a 6 star energy rating. This will strongly encourage passive solar design because direct access to sunlight is a cost effective pathway to achieving this level of energy efficiency. Provisions in the draft code that limit the overshadowing of residential blocks will facilitate passive solar design (see the discussion under “building envelopes” above), thus contributing to the cost-effective achievement of the required energy rating.”

This all remains true. At a time when appropriate access to the sun is becoming more important as ever more people try to reduce their power bills by installing solar hot water and photovoltaic power, this proposed move to weaken solar access rights appears short-sighted and retrograde, and certainly ill considered. It does appear likely that if this proposed repeal were to be presented to the Assembly it would be unlikely to be adopted because of its fairly obvious inequity and likely political unpopularity.

The Intent of Element 5 in Variation 306 also still applies – see below:

Element 5: Amenity (from V 306)

Intent: a) Development is sited and designed to promote energy efficiency and maximise solar access to private open space and living areas of dwellings

b) Dwellings are provided with private and useable private open space that is integrated with, and directly accessible from, the living areas of the dwelling.

Consequently, what is being proposed dilutes the Intent in the Variation.

If it were thought appropriate to diminish the solar access rights of those whose properties northern boundary faces more than 30° east of north or more than 20° west of north, the proper way to do this is to build such weaker provisions into the planning rules, not to simply

make no reference to such properties. The approach adopted in this Technical Amendment would merely result in yet further undesirable ambiguity inviting disputation and litigation. There is too much ambiguity already in the plan, and the GNCA would be opposed to needlessly increasing this. If ESDD really feels that this change is essential a reasoned and proportionate decrease in rights needs to be provided. One question that needs to be answered is why the angles balanced about north instead of being 30° in one direction and 20° in the other?

The GNCA is opposed to this change, and contends the onus rests with ESDD to publicly make the case for any change before a fully informed public debate on the issue can take place.

Amendment of Apparent Sun Angles Tables 1B and A4B

On p17 and p33 of the Technical Amendment it is proposed to amend Tables 1B and A4B of the SDHDC and the MUHDC respectively. Both Tables relate to the Apparent Sun Angle. The amendment is *“to remove requirements for boundaries with an aspect greater than 30° east of north and 20° west of north as these will no longer be relevant”* as discussed above. As indicated, the GNCA feels that the case for these changes has not yet been made. It is further asserted that *“range of aspect angles in the apparent sun angle table still contains gaps with no solar envelope to cover aspects of a block between 9-10° east and west of north, 19-20° east and west of north, and 29-30° east of north”*. The Tables are to be replaced with a new Table 1B and a new Table 4A respectively.

Tables 1B and 4A in their proposed amended form are egregiously ill drafted, and need to be completely rewritten. As they stand they are meaningless. If ESDD is to be consistent in its formal correctness, it might be desirable to indicate that the first number is also measured in degrees, and write it “10°” or the like. The attempt to add completeness and formality by using the mathematical “less than/greater than” symbol is vitiated by using the sign in the wrong direction. As it is at present, entries of the form “North 10->20° East” have the mathematical meaning “North 10 to greater than 20 degrees East”. The set of bearings which are “greater than 20°” includes all bearings greater than 20° east of north, such as 32°, 47°, 52°, 78°, and even 273° (and because they are mathematically well defined, arguably even bearings of greater than 360°) and so forth. Consequently the best that can be said for this wording is that it gives little guidance as to the Sun Angle. It should be re-written.

It would be far better to leave the Tables they were, and if felt necessary, include an explanatory note. Alternatively ESDD could attempt to redraft these Tables so that they conveyed meaningful information.

The GNCA believes that the proposed changes to Tables 1B and 4A be abandoned, and that if ESDD believes that amendments to these Tables are essential, that the amendments be completely redrafted.

Removal of References to Molonglo Valley in building envelope rules

At p11 of the Technical Amendment it is proposed to remove specific references to “Molonglo Valley” in Rules 6, Rule 7 Rule 8 and Rule 9 in the SDHDC in relation to

building envelopes. This would appear to have the effect of removing any provisions in relation to the building envelope in relation to solar access relating to mid-sized blocks in the Molonglo Valley district created before the commencement of Variation 306 was enacted.

The GNCA is very concerned that not all the claims made by ESDD in justifying this proposed change appear to be factually correct. The explanatory note asserts “*The specific reference to the Molonglo Valley in these items and rules can be removed as different provisions are located in the Coombs and Wright precinct codes for existing blocks.*”

However, an examination of the Territory Plan on 22 November 2013 reveals that there is as yet no Precinct Code for Coombs, and that while there is indeed a Precinct Code for Wright it deals exclusively with the Bushfire Attack Levels (BALs) of various blocks in Wright. It is not clear how this situation could arise but it is clearly unsatisfactory.

The GNCA recommends that these amendments be deferred until the appropriate elements of the relevant Precinct Codes have been added to the Territory Plan.

As there is little point in promulgating these amendments at this stage, the delay provides a golden opportunity to improve the clumsy drafting here. We have four provisions, each addressing some element of the building envelope and its relationship to the primary building or the rear zone, the northern boundary, and the presence or otherwise of walls on the northern boundary. Each of these rules appears to apply to a different set of blocks: large; mid-sized; or compact, and vary on when the lease was issued. It seems likely that this is a result of rule being plied on rule over time, as a result of various attempts to improve solar access. The result is that they present the reader with a mess of byzantine complexity. Thought should be given to whether these rules could be simplified or clarified in some way. One rule, which systematically worked through every sized block and all dates of lease granting, would at least be clearer and more consistent, albeit at the risk of being quite lengthy.

While such redrafting was being undertaken, thought should be given to removing all reference (in the SDHDC’s R6 to R9, but also in the MUHDC’s R25) to “*plane(s) comprising lines projected at Y° to the horizontal from an infinite number of points on a line of infinite length Z_m above...*” (where Y° is the specific angle, and Z the height, in the relevant quote). This formula was possibly introduced to make the rules sound more precise and formal. However, the use of infinite lines should be restricted to Euclidian Geometry, a purely intellectual construct. In the non-Euclidian universe we live in it is sufficient, briefer and more comprehensible to refer to “the geometric plane passing at an angle of Y° though the line Z_m above the boundary...”

The GNCA recommends that efforts be put into improving and simplifying the drafting of these Rules. Representatives from the GNCA will be available to discuss any of these issues with ESDD.

Private Open Space

At p26 the Technical Amendment proposes to amend Criterion 41 of the SDHDC with the addition of a provision requiring “reasonable access to sunlight to enable year round use”.

The GNCA sees no need for this amendment, as “reasonable” minimum solar access conditions are already provided for in paragraph (f) of Rule 41. The sole effect of the Criteria is to allow for lesser conditions than those set out in the related Rules (in that there is no need for Criteria to permit developments which exceed the minimum standards set out in the Rules). Consequently the only result of this change would be a weakening of the effect of paragraph (f). The extent of this weakening cannot be estimated at this stage because of the vagueness and unconstrained nature of “reasonable” in this context. Given that any weakening is undesirable this amendment appears unnecessary and undesirable.

The GNCA opposes this amendment as unnecessary.

As always, the GNCA is ready to contribute to produce better planning rules to guide the future development of Canberra. Please do not hesitate to contact us if you wish to discuss any of the matters raised in this document.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Denham', with a stylized, cursive script.

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