16 August 2010

The Manager
Development Policy Section
ACT Planning and Land Authority.
16 Challis Street
Dickson ACT 2602

Dear Sir/ Madam

Draft Variation No 301 – Estate Development Code

Thank you for the opportunity to comment on proposed Draft Variation No 301 – Estate Development Code.

The Property Council welcomes the review and looks forward to the further development of the Codes under the Territory Plan following initial Territory Plan Review in 2008.

Whilst we believe that this is a start towards strengthening the policies surrounding Estate Development Plans for non Residential and Residential Greenfield Estates, the Property Council believes there is still some significant work required before this can be finalised and implemented in replacement of the existing policies.

In particular, the Property Council cautions early implementation without resolving a number of outstanding issues first which have the potential to impact on affordability, diversity of product and will likely cause greater complexity in the Estate Development Process. The Code proposes controls that would restrict outcomes promoted by ACT Government policies including housing affordability and the sustainable transport plan.

With the level of investment in terms of resources and time that is currently undertaken in the development and agency circulation review of the Estate Development Plan, the intent of the Code should provide greater certainty for developers and clarity for the community to understand what the assessment is against and reduce ambiguous definitions and poorly defined outcomes which may be subjective in determination.

The Property Council in its submission has specifically addressed issues that relate to affordability, sustainability, planning processes and reduced ability for the industry to remain flexible and adaptable to changing market needs. The following have been provided for the Authorities consideration:
1. ACTPLA due process and decision making, and use of ambiguous and subjective criteria

2. Predetermined design outcomes and limited flexibility

3. Zone related policies without review of Precinct Code and Territory Plan Maps

4. Potential impacts of the Datum ground level definition on development.

1. **Need to improve due process and reduce ambiguous performance criteria**

Further development is required to ensure that achievement of the controls are not restricted by ambiguous or unclear provisions and are able to resolved without restricting decision through due planning process.

Many of the provisions require TAMS or other agency endorsement as the criterion, as opposed to a rule and a performance measure criterion. This approach does not permit the ability of the Authority to determine or resolve the issue if an agreement cannot be achieved between the Developer and relevant Utility/Service Provider.

There are some instances where a criterion requires endorsement but has no standards or guidelines that apply, for example C6 “four way intersections”. The Code will not prevent four way intersections but fails to provide any guidance to designers. In addition, a number of the provisions appear to have changed from the current standards without any technical reasons or justification (e.g. footpaths increasing from minimum 1.2m to 1.5m and Bus Routes).

In the absence of many performance based criteria, many of the controls have ambiguous and subjective wording such as “unreasonable”, “undesirable”, “adverse” and “appropriate” without providing performance guidelines for either the applicant to demonstrate or relevant Authority to assess against.

There remain many terms that lack definition or would be difficult to demonstrate. For example, C45 use of terms such as summer shade and microclimate. Both are not defined and difficult to measure. The control is badly worded and cumbersome. Other examples are the term “universal housing”, which has no definition or context in its current use and R96 which relates to noise but fails to identify what an external noise generating source is.
It is understood that there is currently a review of the TAMS Design Standards in process. As the Code contains a strong emphasis on TAMS and the respective standards, the proposed Variation should not be approved until such process has been completed.

2. **Predetermined design outcomes and lack of flexibility**

The proposed Code provides for a number of outcomes which limit design to a designated outcome, many with mandatory requirements. These include the following:

- Solar provisions restricting block orientation to solar in the absence of issues such as topography, road network, views etc.
- Rear Lane Access
- Battle Axe Blocks
- Cul de Sac limited to 15 percent of blocks

The intent of the Code should be discouraging poor outcomes, not to determine “good outcomes” without the ability to present alternate design options. Many of the controls restrict designs that have proven good outcomes in many Estates in Canberra.

Of key concern is the proposed solar rating provisions currently restrict block orientation to solar provisions only and do not allow for any flexibility or good subdivision design which also takes into consideration aspect, slope, soil types, drainage paths, utility location, adjacent road hierarchy and infrastructure. This provision appears to be in conflict with the Controls that restrict provision of services in the rear of the block and achieve a good cut and fill balance across the site. This approach is limiting and will not necessarily result in a change to built form ratings. Housing is currently being built at 6-stars or greater on blocks and setbacks not necessarily permitted under the proposed scheme.

The new Code relies on restricting impact on development next door but does not allow for the development of an integrated development where block sizes and orientation are designed with knowledge of what the adjoining development is going to be.

Other examples including R92 which limits battleaxe blocks to open space, yet these can be effective where fronting collector roads or areas of indented parking which may have restricted driveway access. This is similar to the Rear Land provision of R16 that limits current viable options within many new Estates.

These controls should not be mandatory and alternate options with performance criteria should be possible.
3. Zone related policies

Under proposed Section 7.4 (R.88), it is proposed to require at least 50 percent of blocks to be 500m² or more and no more than 20 percent of the blocks to be 250m² or less. No other zone outcomes of objectives are stated.

These should be at a Precinct Code level not a Development Code, where it can be reviewed within the context of the site, location and zone provisions.

Without a review of current and proposed zoning in new Estates, past experience and current market demand suggests that these new provisions will invariably lead to an overall decrease in yield and dramatically impact on the number of affordable detached dwellings.

A high level review of the zoning proposed in new Estates such as Casey, Bonner and Molonglo for Precinct Codes indicates that the predominant zones for land area and single dwelling blocks are RZ1. Without review of the zones within new Estates, the measure will have significant impact on the number of blocks being released and reduce the number of blocks under demand. Blocks between 400m²-500m² remain the most popular block choice for purchasers and larger blocks offered in new Estates often have longer clearance rates and less demand. Many larger blocks are only sold due to high demand and lack of other options.

The choice to limit blocks to 500m² is contrary to current urban development practice around Australia that has seen falling average land areas due to a number of factors including affordability, increased costs of roads and services per dwelling as well as changing household preferences. Increased pressure on reducing block yields in Estates is likely to result in decreased provision of open space and other public amenities. Decreasing block yields will also have an impact on dwelling yields that reduces viability of services such as public transport.

The Rule is in direct contradiction to the criteria which promotes housing diversity and the ACT Governments Affordability policies. The reduction in yield and limitation on block sizes reduces ability for Developers to meet housing affordability objectives without reliance on Multi Unit Developments and severely discounted offerings which impact on longer term affordability. If this policy was applied to a number of new Estates, the number of dwellings would reduce in the order of 10 -15 percent and increase average cost of blocks.
4. Potential impacts of the Datum ground level definition on development

General comment on definition

The new term and definition is proposed to generally replace the current "Natural Ground Level" term, and is proposed to be defined as:

*Datum ground level means the level of the surface of the ground as defined in a field survey and authorised by a qualified surveyor at the time of operational acceptance for greenfield development or prior to any new earthworks having occurred after that time.*

Upon considering the definition wording, it is unclear when the datum level is being established. The development of greenfields estates often require numerous "operational acceptances" to be issued as the development continues and subsequent Crown Leases are releases from the Holding Lease. There are often requirements to achieve various operational acceptance certificates from ACT Government its agencies, which may be given at different times. It is not clear from the proposed definition which operational acceptance will operate to determine the Datum Level. There is also no explanation of the term “greenfield development”.

Datum level implications for development

Development in general, and particularly on larger greenfields parcels have experience difficulty with the design of viable housing projects in the context of the current "Natural Ground Level"(NGL) definition, especially where the site is sloping and the design include a substantial basement. The issues experience are related to the way the GFA, Basement and NGL definitions interact and how this affect a design achieving an efficient unit GFA.

The current NGL and GFA definition require the basement to not protrude by more than 1m above the "Natural Ground Line", else it being counted as GFA and effectively limiting the GFA that can be apportioned to living space (units). These definitions, although often restrictive on established blocks, still allow opportunities to optimise site levels at the time of preparing the site for development, prior to the establishment of the Crown Lease. On new/greenfields land where the proposed design outcome is known and it is apparent that the site levels will result in less efficient development outcomes, there are currently opportunities/avenues available to rectify the levels prior to the Crown Lease being issued.

The introduction of the Datum ground level definition will enforce any development restrictions that are currently implied with the NGL definition, without the opportunity to correct unintentional outcomes.
The setting of the datum level at the establishment of a new estate with smaller and flat sites may be appropriate, but often does not always achieve best development outcome on larger sites. This is especially noticeable at sites where a slight fall across the length of the site could result in a level difference in excess of 1m (and often much more), with the associated problems to design efficient and cost effective developments (with basement carparking) that achieve adequate GFA yields.

The proposed datum level definition will not allow the re-establishment of ground levels in the context of a proposed development and will impact on the GFA yield that may be achieved, or drive the basement deeper into the ground (more excavation required to meet the 1m protrusion requirement). Designing housing (and particularly affordable housing) on these sites often result in instances where the definition requirements limit the GFA that can be achieved for units (as some ends up being counted in the basement carparking) and/or deeper excavation requirements to circumvent the GFA loss at substantial additional cost (to be included in the individual unit prices). These costs can accrue and impact negatively on opportunities to deliver viable and affordable housing projects, or even make the development unviable.

On older greenfields sites where the subdivision were initially performed without a clear understanding of the future development requirements that would come to play years later when the sites are being developed, the early establishment of the Datum Level will limit development potential. Some of the recent development projects in Bruce along Thynne and Braybrooke Streets suffered from an outcome such as these and when considering the datum level definition, and the inability to amended the level by performing new earthworks, it is clear that the unintended limitations on basement location and GFA yields associated with steeply sloping blocks (such as these) cannot be corrected.

The Authority should carefully consider the proposed definition and, as a minimum, include opportunities to re-define the Datum Level, where the initial establishment created unintended impacts that limit development potential for viable, high quality and affordable development.

Yours sincerely

Catherine Carter
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Property Council of Australia