



Legislative Assembly for the Australian Capital Territory

Standing Committee on Planning,
Transport and City Services

Inquiry into the Territory Plan and other associated documents

Legislative Assembly for the Australian Capital Territory
Standing Committee on Planning, Transport and City Services

Approved for publication

10th Assembly
March 2024

About the committee

Establishing resolution

The Assembly established the Standing Committee on Planning, Transport and City Services on 2 December 2020.

The Committee is responsible for the following areas:

- City Renewal Authority
- Suburban Land Agency
- Planning and Land Management (excluding parks and conservation)
- Transport
- City Services including waste and recycling
- Housing (excluding service provision)
- Building and Construction

You can read the full establishing resolution [on our website](#).

Committee members

Ms Jo Clay MLA, Chair

Ms Suzanne Orr MLA, Deputy Chair

Mr Mark Parton MLA

Secretariat

James Bunce, Committee Secretary (from 6 November 2023)

Miona Ikeda, Acting Committee Secretary (to 3 November 2023)

Adam Walker, Assistant Secretary

Nicola Straker, Assistant Secretary

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About this inquiry

The Territory Plan was referred by the Minister for Planning and Land Management under section 608(1) of the *Planning Act 2023* on 11 September 2023.

The Committee decided to inquire into the Territory Plan and other associated documents on 12 September 2023. In accordance with section 608(2) of the *Planning Act 2023*, the Committee informed the Minister of its intention to conduct this Inquiry on 12 September 2023.

The Committee informed the Assembly of its intention to conduct this inquiry on Thursday 14 September 2023.

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Acronyms and abbreviations

Acronym	Long form
2007 Act	<i>Planning and Development Act 2007</i>
ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service
BSUD Guide	Biodiversity Sensitive Design Guide
Cth	Commonwealth
Committee	Standing Committee on Environment, Climate Change and Biodiversity
DA	Development Application
DV369	(Draft) Variation 369
EIE	Explanation of Intended Effects
EOI	Expression of Interest
EPA	Environment Protection Authority
EPSDD	Environment, Planning and Sustainable Development Directorate
GNCA	Griffith Narrabundah Community Association
ISCCC	Inner South Canberra Community Council
NCA	National Capital Authority
NCDRP	National Capital Design Review Panel
OCSE	Office of the Commissioner for Sustainability and the Environment
PIA	Planning Institute of Australia (ACT Division)
Planning Act	<i>Planning Act 2023</i>
PTCBB	Public Transport Association of Canberra
Territory Plan	<i>Territory Plan 2023</i>
The Association	ACT Rural Landholders Association of Farmers
TPA or Planning Authority	Territory Planning Authority

Recommendations

Recommendation 1

The Committee recommends that the ACT Government look to simplify and clarify searching and navigation as soon as possible.

Recommendation 2

The Committee recommends that the Planning Authority ensure that Development Application templates be made available online.

Recommendation 3

The Committee recommends that the Territory Planning Authority clarify how the Territory Plan works and how it relates to the Design Guides and technical Specifications.

Recommendation 4

The Committee recommends that the ACT Government continue the new planning system hotline for at least 12 months to assist community and the industry to access assistance and information about the planning system.

Recommendation 5

The Committee recommends that the Environment, Planning and Sustainable Development Directorate set accountability indicators and report in the Directorate's Annual Reports against whether the new planning system is delivering better outcomes, including:

- how many DAs are approved;
- how many deviate from technical specifications;
- how long DA approval takes;
- how many inspections were conducted after construction;
- how many inspections found breaches;
- what enforcement action was taken; and
- which issues caused the highest amount of complaints, appeals and non-compliance.

Recommendation 6

The Committee recommends that the Environment, Planning and Sustainable Development Directorate include in its Annual Report the number of Environment and Planning Forum meetings held, and what feedback and outcomes arose from those meetings.

Recommendation 7

The Committee recommends that the ACT Government provide additional resources to the National Capital Design Review Panel and appropriate levels of support staff such that bookings for prescribed developments receive an effective and efficient response.

Recommendation 8

The Committee recommends that the ACT Government appoint a government landscape architect.

Recommendation 9

The Committee recommends that 18 months after the commencement of the Territory Plan, the two-pass consultation process for development applications be reviewed to establish whether further consultation reform is necessary.

Recommendation 10

The Committee recommends that the ACT Government consider how amendments to the Design Guides and Technical Specifications could be subject to a community engagement process.

Recommendation 11

The Committee recommends that the ACT Government consider amending the *Planning Act 2023* so that major amendments to the Design Guides and Technical Specifications are subject to review and comment by the relevant Assembly Committee.

Recommendation 12

The Committee recommends that the Territory Plan be amended (including whether appropriate in the District Policies) to allow more zoning changes in RZ1 than is currently permitted under the Territory Plan.

Recommendation 13

The Committee recommends that the Planning and Land Authority report against the outcomes of the dual occupancy reforms including:

- how many Development Applications for dual occupancies are lodged;
- how many are approved;
- how many result in new dwellings;
- what the net gain of new dwellings is (subtracting knockdown rebuilds); and
- the suburbs and areas in which dual occupancies are built.

Recommendation 14

The Committee recommends that the Territory Plan be amended to allow higher densities in specific locations, such as RZ2, RZ3 and RZ4 zones, which are close to local shops, adjacent to public transport and community facilities providing opportunities for greater block consolidations that would:

- permit planning on a 'precinct' basis; and
- provide opportunities for greater densities and heights.

Recommendation 15

The Committee recommends that the ACT Government implement further policy changes to the Territory Plan to encourage community housing or public housing on underutilised

community-facility zoned land, like church land, whilst ensuring that we protect recreational and community spaces.

Recommendation 16

The Committee recommends that the evaluation of initiatives in the Demonstration Housing Project should include an early assessment soon after the occupation/completion of the building so that any learnings can be understood and used to guide any amendments to the Territory Plan.

Recommendation 17

The Committee recommends that the ACT Government provide an explanation of the barriers that prevent land being sold below market value to Housing ACT for public housing and community organisations for community housing, and explain the effect this situation has on the ability for Housing ACT and community housing organisations to provide public and community housing.

Recommendation 18

The Committee recommends that the Territory Planning Authority work with the Education Directorate to determine the need for a school in the Belconnen Town Centre.

Recommendation 19

The Committee recommends that the Territory Plan should be amended to more firmly embed living infrastructure requirements.

Recommendation 20

The Committee recommends that the ACT Government, where practicable, ensure the protection of biodiversity and conservation areas in the Territory Plan using the framework outlined in the discussion paper *Building a Biodiversity Network Across the ACT*.

Recommendation 21

The Committee recommends that the ACT Government consider reviewing the Biodiversity Sensitive Urban Design Guide to examine whether it should apply to areas smaller than one hectare in line with the *Nature Conservation Act 2014* and the *Environment Protection and Biodiversity Conservation Act 1999*.

Recommendation 22

The Committee recommends that the ACT Government review the solar fence requirements to ensure that solar efficiency is maximised so as to reduce energy consumption.

Recommendation 23

The Committee recommends that the ACT Government provide sufficient resources to relevant directorates and authorities to enforce planning standards and environmental protection to ensure developments are built in line with development application approvals and that tree protection, sediment, construction and other development standards are being met.

Recommendation 24

The Committee recommends that the ACT Government take steps to ensure there are opportunities for ample green space in areas subject to densification.

Recommendation 25

The Committee recommends that with respect to rural leases, the ACT Government:

- Work with the Commonwealth to provide improved tenure outcomes for leases in the Majura Valley;
- Finalise the Eastern Broadacre Planning Study and Eastern Broadacre Strategic Assessment; and
- Consider Incorporating once finalised the Canberra Region Local Food Strategy into the Territory Plan.

Recommendation 26

The Committee recommends that the ACT Government consider how amendments to DAs submitted under the former planning system can be best handled going forward.

Recommendation 27

The Committee recommends that the ACT Government consult directly with the traders and owners in the Phillip Service Trades area, with a view to reversing the zoning change that removed residential use from the Phillip Service Trades Area.

Recommendation 28

The Committee recommends that the Planning Authority amend the Inner South District Strategy to reinstate the Forrest laneway and incorporate it into the District Strategy or the Territory Plan.

Recommendation 29

The Committee recommends that the Inter-Town Public Transport Routes should be included in the Territory Plan 2023.

Recommendation 30

The Committee recommends that the *Planning Act 2023* be amended to include referral of the Territory Plan to the relevant Legislative Assembly Committee at least three years, and no more than five years, into its operation for consideration of the conduct of an inquiry.

1. Introduction

Background to the Territory Plan

- 1.1. The Australian Capital Territory (ACT) Government commenced the *ACT Planning System Review and Reform Project* (the Review) in March 2019, to review the existing ACT planning system.¹
- 1.2. This was the first time in 15 years since the enactment of the *Planning and Development Act 2007* (the 2007 Act) where a major review was undertaken on the Territory's planning legislation.²
- 1.3. The review involved key stakeholder and community engagement through surveys and workshops throughout 2020 and 2021, as well as the establishment of the Stakeholder Working Series and Legislation Working Group with industry and community representatives in 2021, to assist with the drafting of new planning legislation.³
- 1.4. In March 2022, the ACT Government issued a draft Planning Bill for public consultation between 15 March and 15 June 2022.⁴ A total of 329 submissions were received on the draft Planning Bill (including those not submitted through the ACT Government's *YourSay Conversations* portal), consisting of:
 - 210 quick comments;
 - 26 feedback forms;
 - 66 online submissions; and
 - 27 emailed submissions.⁵
- 1.5. Following the consultation process, the *Planning Bill 2022* (the Bill) was presented to the Assembly on 21 September 2022 by the Minister for Planning and Land Management, Mr Mick Gentleman MLA.⁶ The *Planning Act 2023* (the Planning Act) was passed by the Assembly on 6 June 2023.
- 1.6. The Planning Act repealed and replaced the 2007 Act and was the first of three key planning reforms to arise from the Review, alongside the introduction of District Strategies and a new Territory Plan.⁷
- 1.7. The *Planning Act 2023* states that there must be a Territory Plan that applies to the ACT and is a notifiable instrument under that Act.⁸

¹ Planning Bill 2022, *Explanatory Statement*, p 5.

² ACT Government Environment, Planning and Sustainable Development Directorate, [ACT Planning System Review and Reform Project](#), (accessed 30 September 2022).

³ ACT Government, [ACT Planning System Review and Reform Project: Planning Bill 2022](#), (accessed 30 September 2022).

⁴ ACT Government, [Draft Planning Bill: Consultation Report September 2022](#), p 6.

⁵ ACT Government, [Draft Planning Bill: Consultation Report September 2022](#), p 8.

⁶ ACT Legislative Assembly, *Minutes of Proceedings*, No 59, 21 September 2022, p 805.

⁷ EPSDD, [The Planning Bill](#), (accessed 30 September 2022).

⁸ *Planning Act 2023*, s 45.

- 1.8. Section 46 of the Planning Act states that the object of the Territory Plan is:
- ...to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.⁹
- 1.9. Section 605 of the *Planning Act* provides that the Territory Planning Authority (TPA) must prepare a draft of the Territory Plan no later than six months after the commencement of the Act. Section 605 also provides that the Government must release the draft Territory Plan for public comment and consult with the following entities:
- the National Capital Authority (NCA);
 - the Conservator of Flora and Fauna;
 - the Environment Protection Authority (EPA); and
 - the Heritage Council.¹⁰
- 1.10. Consultation occurred from 1 November 2022 to 3 March 2023, in which the following draft documents were released to the public:
- Draft new Territory Plan and planning technical specifications;
 - Draft district strategies;
 - Explanation of intended Effects (EIE) for design guides;
 - Facts sheets and other supporting documentation.¹¹
- 1.11. Under section 606(2) of the *Planning Act*, the Territory Planning Authority is required to provide the Executive with the draft Territory Plan, background papers relating to the draft plan, and a written report (a consultation report) about the Authority's consultation with the public, the National Capital Authority, the Conservator of Flora and Fauna, the Environment Protection Authority, and the Heritage Council.¹²
- 1.12. During this process more than 400 written submissions and over 1800 comments were received.¹³
- 1.13. After the Executive receives the Territory Plan under section 606(2), it is required under Section 607(1) to make the Territory Plan, which is a notifiable instrument under section 45(2).¹⁴
- 1.14. Under section 608 of the *Planning Act 2023*, once the Minister for Planning and Land Management has made the Territory Plan under section 607(1), they are required to refer the Territory Plan to the relevant Assembly Committee. The Committee then has seven

⁹ *Planning Act 2023*, s 46.

¹⁰ *Planning Act 2023*, s 605.

¹¹ ACT Government, [Planning System Consultation Report](#), p 8.

¹² *Planning Act 2023*, s 606(2).

¹³ ACT Government, [Territory Plan Consultation Report](#), p 2.

¹⁴ *Planning Act 2023*, s 607(1).

days to decide whether to inquire into the Plan, and if so inquiring, has 6 months to report to the Minister from the date of receiving the Territory Plan.¹⁵

Conduct of the Inquiry

- 1.15. On Tuesday 5 September 2023, the Minister for Planning and Management, Mr Mick Gentleman MLA, made the *Territory Plan 2023* (Notifiable instrument NI2023- 540). On Wednesday 9 November 2023, the Minister for Planning and Land Management made a commencement notice (CN2023-11) stating that the interim Territory Plan commenced on commencement of section 45 of the *Planning Act 2023*. On the same day, the Minister made a commencement notice (CN2023-10) stating that the remaining provisions of the *Planning Act 2023* commence on 27 November 2023.¹⁶
- 1.16. On Monday 11 September 2023, the Minister for Planning and Land Management referred the Territory Plan to the Committee on Planning, Transport and City Services (the Committee) under section 608(1) of the *Planning Act 2023*.
- 1.17. In doing so, the Minister's office provided the Committee with copies of all submissions received by the Government as part of the public consultation process, together with a copy of the Territory Plan, the Consultation Report and the Territory Plan Explanatory Report.
- 1.18. On Tuesday 12 September 2023, the Committee resolved to undertake an Inquiry into the Territory Plan, and wrote to the Minister under section 608(2)(a) of the *Planning Act 2023* informing the Minister of the Committee's decision to hold an Inquiry.
- 1.19. The Committee issued a call on 14 September 2023 for expressions of interest to appear at public hearings scheduled for 6 and 7 December 2023, which closed on 27 October 2023. A total of 35 expressions of interest were received by the Committee. A list of those expressions of interest that were agreed to be published as an exhibit are provided at **Appendix A**.
- 1.20. 33 submissions and 44 exhibits were received for the Inquiry. A list of all submissions and exhibits is provided at **Appendix A**.
- 1.21. The Committee held public hearings on 6 and 7 December 2023 and heard from individuals, community and environmental organisations, housing industry groups, residential associations, and the Minister for Planning and Land Management. A list of witnesses who appeared before the Committee is provided at **Appendix B**. The transcripts of proceedings are accessible at https://www.hansard.act.gov.au/Hansard/10th-assembly/Committee-transcripts.htm#6_ptcs.
- 1.22. There were 8 Questions on Notice (QONs) and 3 Questions Taken on Notice (QTONs) from the public hearings. The details of the QONs and QTONs are provided at **Appendix C**.

¹⁵ *Planning Act 2023*, s 608.

¹⁶ NI2023-540: *Territory Plan 2023*, cl 3; CN2023-10: *Planning Commencement Notice 2023*; CN2023-11: *Planning (Interim Territory Plan) Commencement Notice 2023*.

- 1.23. The Committee met on Monday 4 March 2024, Tuesday 5 March 2024 and Thursday 7 March 2024 to consider the Chair's draft report. The final report was adopted on Thursday 7 March 2024, for tabling on 19 March 2024.

2. Outline of the Territory Plan

- 2.1. At the centre of the *Planning Act 2023* (the Act) is a shift in planning processes for the ACT. According to section 7(1), the new Act seeks to provide an accessible, effective, efficient and enabling planning system that:
- is outcomes focussed;
 - promotes and facilitates ecologically sustainable development; and
 - provides for public participation in the system.¹⁷
- 2.2. The Act sets out the key components of the planning system, which includes:
- the overall planning strategy for the ACT;
 - the district strategies setting out the desired future outcomes for each of the nine districts; and
 - a Territory Plan, which sets out the development assessment principles, land use zones, and desired planning outcomes.¹⁸
- 2.3. The *Planning Act 2023* outlines that Territory Plan must:
- a) include a map that identifies districts and designates land use zones;
 - b) set out the planning principles and policies for giving effect to the object of the plan.¹⁹
- 2.4. The Act also provides that the Territory Plan may be supported by background material, guides, advisory notes and other supporting material that the Territory Planning Authority considers will assist readers in understanding and applying the plan.²⁰
- 2.5. The Territory Plan on the ACT Legislation Register consists of seven parts:
- a) Part A – Administration and Governance
 - b) Part B – Territory Plan Maps
 - c) Part C – Planning Principles and Strategic Links
 - d) Part D – District Policies
 - e) Part E – Zone Policies
 - f) Part F – Other Policies
 - g) Part G - Dictionary
- 2.6. These consist of the following contents:
- Maps;
 - Governance;

¹⁷ *Planning Act 2023*, s 7(1).

¹⁸ *Planning Act 2023*, s 8(2).

¹⁹ *Planning Act 2023*, s 48.

²⁰ *Planning Act 2023*, s 49.

- Strategic Direction;
- Residential Zones;
- Commercial Zones;
- Industrial Zones;
- Community Facility Zones;
- Parks and recreation Zones;
- Transport and Suburban Zones;
- Non-Urban Zones;
- Precinct Maps and Codes;
- General Codes;
- Overlays;
- Definitions;
- Structure Plans;
- Concept Plans; and
- Development Codes;

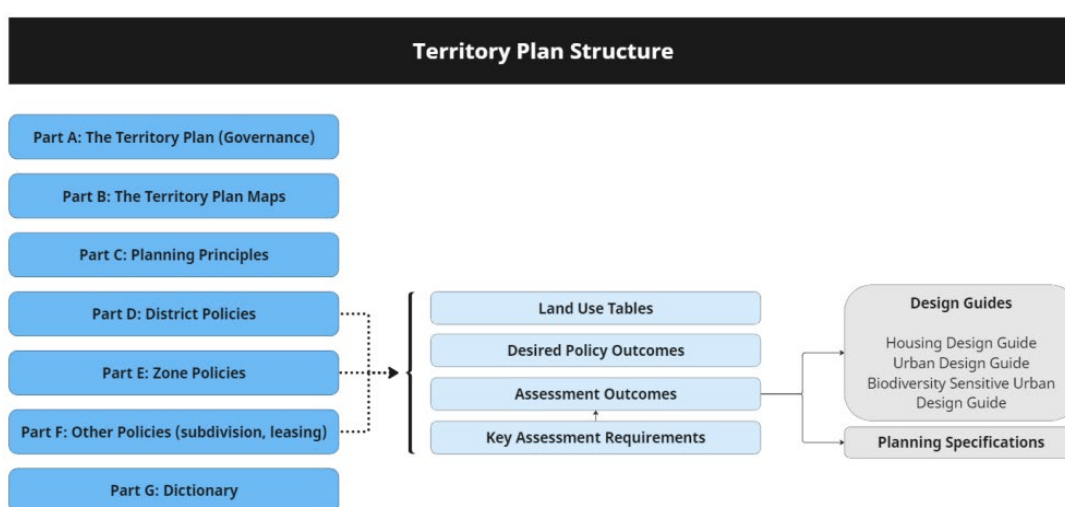


Figure 1: Territory Plan structure and supporting material [Source: ACT Government, *ACT Territory Plan Explanatory Report*, p 9].

Administration and Governance

2.7. The Governance document of the Territory Plan (Part A) outlines the administrative provisions of the Territory Plan as provided for under the *Planning Act 2023*, its interaction with other legislative provisions such as the *Planning Strategy 2012*, and *Australian Capital Territory (Planning and Management) Act 1988* (Cth), which outlines the relationship between the Territory Plan and the National Capital Plan.

2.8. The Governance document explains the object of the Territory Plan as:

to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Australian Capital Territory (the ACT) provides

the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation (Section 46 of the Act).²¹

2.9. It provides the statutory framework for future development and conservation for land within the ACT (excluding Designated Land under the National Capital Plan), by guiding planning decisions including development applications, zoning, and the use of land. The Territory Plan does so via an ‘outcome-based approach to the assessment of development proposals’.²²

2.10. Part A contains a brief guide on using the Territory Plan. It notes that the primary assessment consideration for development applications are the assessment outcomes contained in district, zone and other policies.²³ According to Part A:

In demonstrating compliance with the assessment outcomes, consideration is to be given to the relevant design guides and may be given to planning technical specifications which may serve as a benchmark. While all assessment outcomes are to be met, not all outcomes are covered by design guidance and/or planning technical specification. Assessment of a zone assessment outcome can take into consideration the relevant zone specification or an applicable district specification, noting that the district specification takes precedence over the zone specification.²⁴

2.11. Part A outlines the structure of the Territory Plan, noting that in addition to the seven Parts outlined above, it includes a range of supporting documents. While not forming part of the Territory Plan, these documents are notifiable instruments and ‘may be “called up” by policies within the Territory Plan’.²⁵

2.12. These supporting documents include a set of design guides that ‘provide clear and easy to understand qualitative guidance’ intended to ‘identify design possibilities and encourage innovation’. According to Part A, design guides ‘are critical in the design and assessment process’ that identify both ‘where flexibility in design can be considered’ and ‘matters that must be addressed’.²⁶

2.13. According to the *Biodiversity Sensitive Urban Design Guide*:

The guides support the development and interpretation of statutory policy by providing clear written and visual guidance to help proponents interpret the expected outcomes, while supporting an outcomes-based approach for development assessment.²⁷

2.14. The assessment outcomes used in the design guides are grouped into eight themes:

²¹ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 3.

²² ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 3.

²³ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

²⁴ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

²⁵ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 5.

²⁶ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 5.

²⁷ ACT Government, *Biodiversity Sensitive Urban Design Guide* (accessed 24 January 2024), p 6.

- country and place;
- urban structure and natural systems;
- site and land use;
- access and movement;
- public space and amenity;
- built form and building design;
- sustainability and environment; and
- parking, services and utilities.²⁸

2.15. The design guides discussed in Part A include an *Urban Design Guide*,²⁹ which is required for:

- precinct-scale developments greater than one hectare;
- developments with a combined gross floor area exceeding 10,000 square metres;
- developments comprising public or common space over 1000 square metres; or
- developments where the proponent is required to seek the advice of the Design Review Panel.³⁰

Design Guides and Technical Specifications

2.16. Part A examines the *Housing Design Guide*,³¹ which is required for ‘residential developments, excluding single dwelling housing or secondary residence’. Part A states that proposed developments must demonstrate consideration of the Housing Design Guide’s guidance on the relevant assessment outcomes, with elevated weighting being given to:

- visual privacy and building separation;
- solar and daylight access;
- common circulation and spaces;
- apartment size and layout;
- ceiling heights;
- private open space and balconies; and
- natural ventilation.³²

²⁸ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

²⁹ ACT Government, [Urban Design Guide](#) (accessed 24 January 2024).

³⁰ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 8.

³¹ ACT Government, [Housing Design Guide](#) (accessed 24 January 2024).

³² ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 9.

- 2.17. The third design guide listed in Part A is the *Biodiversity Sensitive Urban Design Guide*.³³ Part A notes that this guide applies to ‘the planning, design, and approval processes for the development and redevelopment’ of sites in:
- future urban areas;
 - non-urban zones;
 - PRZ1 urban open space; and
 - all zones for developments with an area greater than one hectare.³⁴
- 2.18. However, this guide does not apply to single dwellings, secondary residences, or ‘where the increase in impermeable surfaces is 500m² or less.’³⁵
- 2.19. The *Biodiversity Sensitive Urban Design Guide* contains detailed for proponents to demonstrate consistency with the following themes:
- maintain and enhance nature;
 - connect and extend nature;
 - minimise threats to protect nature; and
 - connect people to nature.³⁶
- 2.20. Additionally, according to Part A under the *Planning Act 2023* other ‘place specific or theme-based’ design guides ‘may be made from time to time’.³⁷
- 2.21. The *City Centre Urban Design Guide* provides place specific guidance that builds on and assists in interpreting the other three design guides with reference to Canberra’s city centre. In this regard, it takes precedence over the Urban Design Guide when conflicts arise.³⁸
- 2.22. It is the first – and currently only – design guide focussed on place-based design and seeks to ‘recognises current values and patterns while enabling change, as envisaged by the planning reform, to create a compact, sustainable, affordable, vibrant and equitable city’.³⁹
- 2.23. The *City Centre Urban Design Guide* considers specific aspects of urban design such as sightlines to key landmarks, the desired ‘future character’ of the five precincts within the city centre, and the design objectives that set the priorities for the development of these precincts.⁴⁰
- 2.24. The other set of supporting documents discussed in Part A are the planning technical specifications. These documents are intended to be used ‘as a reference or benchmark’, ‘a

³³ ACT Government, [Biodiversity Sensitive Urban Design Guide](#) (accessed 24 January 2024).

³⁴ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

³⁵ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

³⁶ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

³⁷ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 9.

³⁸ ACT Government, [City Centre Urban Design Guide](#) (accessed 24 January 2024), p 2.

³⁹ ACT Government, [City Centre Urban Design Guide](#) (accessed 24 January 2024), p 4.

⁴⁰ ACT Government, [City Centre Urban Design Guide](#) (accessed 24 January 2024), pp 20–33.

possible solution', or 'guidance for identified aspects' in the preparation and assessment of development proposals.⁴¹

- 2.25. Each district has its own specific set of technical specifications. These specifications can be 'used to demonstrate compliance with the assessment outcomes' in the corresponding district policy or relevant zone policy.⁴² In addition to district specifications, the Environment, Planning, and Sustainable Development Directorate (EPSDD) has published a list of zone specifications for all the various zones and a set of subdivision specifications.⁴³
- 2.26. Part A also defines the hierarchy of the documents that make up the Territory Plan. Where inconsistencies exist, the hierarchy determines which document take precedence. In order of precedence, it lists the hierarchy as follows:
- District policy;
 - Zone policy;
 - Other policy;
 - Design guides;
 - District specifications;
 - Zone specifications; and
 - Other specifications.⁴⁴

Maps

- 2.27. 7 Maps are provided for under the Territory Plan, each relating to a specific district or districts:
- ACT Capital Territory;
 - Belconnen;
 - Canberra Central and Oaks Estate;
 - Gungahlin and Hall;
 - Molonglo;
 - Tuggeranong, Hume and Tharwa; and
 - Woden and Weston Creek.

⁴¹ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part A: Administration and Governance](#)', p 6.

⁴² See, for example: NI2023-544: [Planning \(Gungahlin District\) Technical Specifications](#), p 5; NI2023-733: [Planning \(Belconnen District\) Technical Specifications 2023 \(No 2\)](#), p 6; NI2023-735: [Planning \(Inner North and City District\) Technical Specifications 2023 \(No 2\)](#), p 6.

⁴³ ACT Government Environment, Planning and Sustainable Development Directorate, [Technical Specifications](#) (accessed 25 February 2024).

⁴⁴ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part A: Administration and Governance](#)', p 9.

- 2.28. These maps provide an overview of the Zones and Overlays in the Territory Plan, but do not display District and Suburb Precinct Codes. An example, for the Belconnen District, is provided at Figure 2:

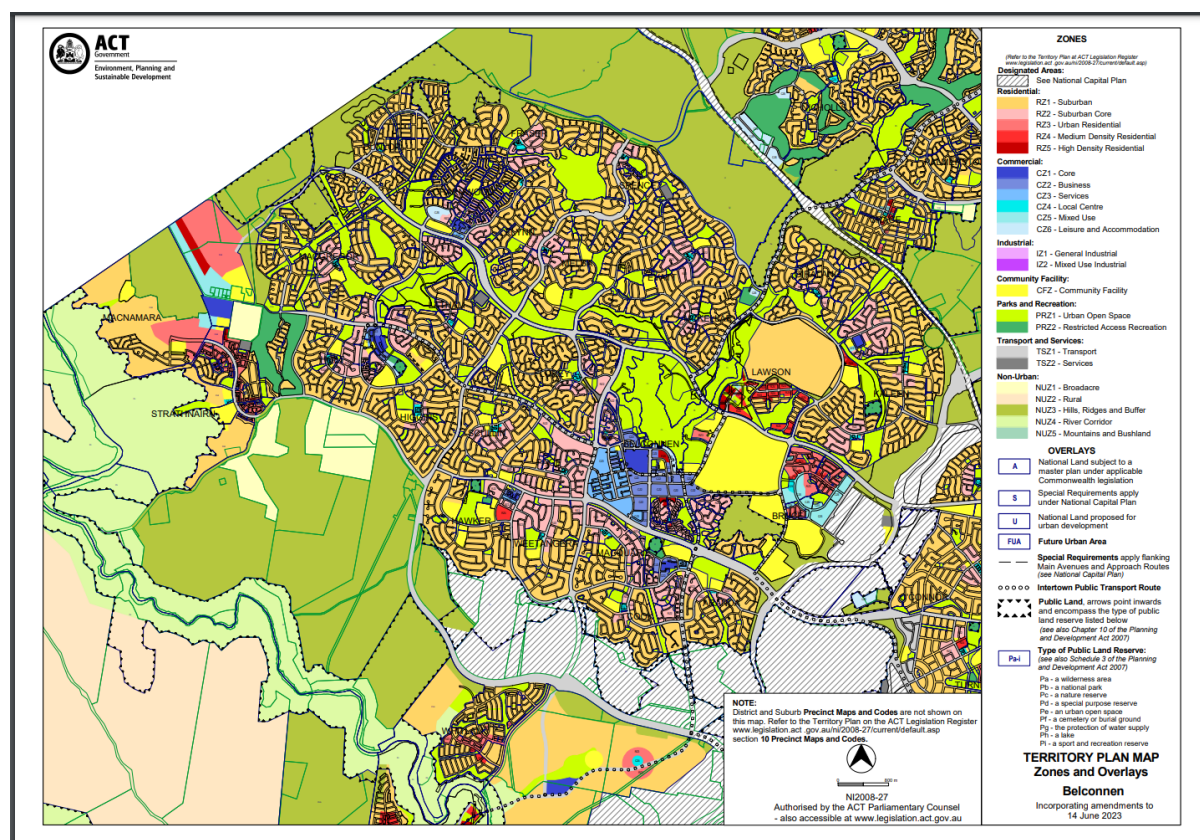


Figure 2: Belconnen District Territory Plan Map [Source: NI2024-540: *Territory Plan 2023*, ‘Part B: Territory Plan Maps’, p 5].

Planning principles

- 2.29. Part C of the Territory Plan provides a statement on the relevant principles of good planning. It outlines the principles of good planning contained in Section 10 of the *Planning Act 2023*.
- 2.30. These principles include:
- Activation and liveability principles, under which ‘planning and design should support diverse economic and social activities’ and lead to urban areas including a range of housing and travel options. Active travel and public transport are promoted for urban areas and districts, and should cater to a diverse range of cultural and social activities. Quality of life and wellbeing of residents should be supported and enhanced by policy.⁴⁵

⁴⁵ ACT Government, *Territory Plan 2023*, NI2024-540, ‘Part C: Planning Principles and Strategic Links’, p 3.

- Cultural heritage conservation with developments that are respectful of local heritage and either avoid negative affects on heritage or, when unavoidable, ensure that any affects are 'justifiable and proportionate'.⁴⁶
- High quality design with developments that are focussed on people, and reflect the local setting; have a distinctive identity that responds to the local character; and integrate build form, infrastructure and public spaces. Public spaces should contribute to the urban forest, and built form should be inclusive and accessible.⁴⁷
- Planning strategies, plans and policy should improve housing access, affordability and choice, as well as ensuring that housing is close to services, amenities and transport options.⁴⁸
- Integrated delivery that encourages effective and efficient coordination of planning-related policies. This includes facilities and infrastructure designed to meet future needs and integrated in related development, as well as built form that is durable and adaptive.⁴⁹
- Investment facilitation, with planning that strengthens economic prosperity and promotes public and private investment towards common goals.⁵⁰
- Long-term focus for policy frameworks that are ecologically sound and promote equity, response to emerging challenges and identify impacts through monitoring, benchmarking and evaluation.⁵¹
- Natural environment conservation, where planning and design promotes resilient ecosystems, avoids or minimises loss of habitat, supports the operation of environmental laws, and integrates biodiversity connectivity and habitats across urban areas.⁵²
- Sustainability and resilience, focussed on adapting to climate change and mitigating the effects of urban heat, with policies that promote the use, reuse and renewal of sustainable resources.⁵³
- Urban regeneration, with growth being mostly within or close to the existing urban footprint.⁵⁴

⁴⁶ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part C: Planning Principles and Strategic Links](#)', p 3.

⁴⁷ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 3.

⁴⁸ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 4.

⁴⁹ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 4.

⁵⁰ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 4.

⁵¹ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 4.

⁵² ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 4.

⁵³ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 5.

⁵⁴ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part C: Planning Principles and Strategic Links](#)', p 5.

District Policies

- 2.31. The Territory Plan includes ten district policies under Part D, which are drawn from the district strategies required under the Act. According to the Territory Plan, district policies are an ‘important and distinctive feature’ of the Plan:

District policies are key to shaping places and communities in the ACT, implementing strategic planning objectives, protecting and minimising the impacts on our environment, and establishing future urban form and development patterns.⁵⁵

- 2.32. The Territory Plan states that each District Policy outlines ‘desired policy outcomes that are important to each district’, and includes key assessment requirements and outcomes. They also specify permissible and prohibited developments in the zones in each district. Development applications are required to demonstrate consistency with all relevant assessment requirements and outcomes contained in the relevant district policy.⁵⁶

- 2.33. The Territory Plan contains eight urban, and one non-urban, district policies:

- Gungahlin District;
- Belconnen District;
- Inner North and City District;
- Inner South District;
- Molonglo Valley District;
- Woden District;
- Tuggeranong District;
- East Canberra District; and
- Non-urban district.⁵⁷

- 2.34. These District Plans contain a list of the types of assessable and prohibited developments broken down by suburb, as well as a set of policy outcomes for developments within the district. For example, according to the Gungahlin District Policy:

Development proposals in Gungahlin District will be assessed having regard to the key characteristics of the district and the policy outcomes to be achieved for the district. The policy outcomes to be achieved for Gungahlin District are derived from the Gungahlin District Strategy, that sets the vision and directions for the district.⁵⁸

⁵⁵ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 2.

⁵⁶ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 2.

⁵⁷ ACT Government, *Territory Plan 2023*, NI2023-540.

⁵⁸ ACT Government, *Territory Plan 2023*, NI2024-540, ‘[Part D: District Policies, D1 – Gungahlin District Policy](#)’, p. 3.

- 2.35. The district strategies also list a series of desired policy outcomes, tailored to the specific circumstances of the area. For the Gungahlin district, the relevant policy sets out the following desired outcomes:
- enhanced connectivity corridors for woodlands and grassland for threatened species;
 - the restoration of waterways and application of water sensitive urban design principles along the Ginninderra Creek corridor and around Yerrabi and Gungahlin Ponds;
 - the provision of economic opportunity in Gungahlin Town Centre through increases in usable office space;
 - protection of the urban services role played by Mitchell;
 - enhancing public transport connectivity between the town centre and outlying suburbs on the northern fringe;
 - construction of new schools and community and recreational facilities to fill identified gaps and cater to future needs; and
 - the development of new greenfield suburbs as exemplars of sustainable neighbourhoods.⁵⁹
- 2.36. In addition, district policies define the specific assessment outcomes for a district. An example of this can be found in the Inner South District Policy. For the suburbs of Kingston, Griffith and Fyshwick, the District Policy states that building frontages along Canberra Avenue must be 'consistent with established building lines and achieve a landscaped setting'.⁶⁰ In cases where there are no specific assessment outcomes, the relevant district policy lists none, as is the case in Gungahlin.⁶¹
- 2.37. Separate to specific assessment outcomes, the district policies include assessment requirements. According to the Inner South District Policy, these 'set the mandatory development controls for specific areas, and sites within' the relevant district.⁶² For example, the Belconnen District Policy includes a range of development controls within the Belconnen Town Centre which define various aspects such as:
- improving connections between the University of Canberra and the Belconnen Town Centre;
 - the creation of 'destination areas' such as lakeside buildings along Emu Bank as an outdoor dining precinct;
 - protecting service trade areas from noisy uses such live music;
 - promotion and retention of existing high quality cultural and recreational facilities;
 - provision of public transport and opportunity for employment; and

⁵⁹ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part D: District Policies, D1 – Gungahlin District Policy](#)', p 4.

⁶⁰ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part D: District Policies, D4 – Inner South District Policy](#)', p 11.

⁶¹ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part D: District Policies, D1 – Gungahlin District Policy](#)', p 4.

⁶² ACT Government, *Territory Plan 2023*, NI2024-540, '[Part D: District Policies, D4 – Inner South District Policy](#)', p 11.

- detailed building requirements in specific areas and blocks within the area, including height restrictions, frontage requirements, setbacks, easements, designation for commercial use on the ground floor, public landscaping and street furniture requirements, and maximum gross floor space requirements.⁶³

Zone policies

2.38. The Territory Plan includes eight zone policies under Part E. According to Part A, the seven zone policies incorporate 23 land use zones.⁶⁴ The zone policies published under the Territory Plan are:

- Residential Zones Policy, which applies to all land in residential zones from RZ1 to RZ5.⁶⁵
- Commercial Zones Policy, which applies to all land in commercial zones from CZ1 to CZ6.⁶⁶
- Industrial Zones Policy, which applies to all land in industrial zones IZ1 and IZ2.⁶⁷
- Community Facility Zone Policy, which applies to all land zoned for community facilities.⁶⁸
- Parks and Recreation Zone Policy, which applies to all land zoned PRZ1 and PRZ2.⁶⁹
- Transport and Services Zone Policy, which applies to all land zoned TSZ1 and TSZ2.⁷⁰
- Non-urban Zone Policy, which applies to all land in non-urban zones NUZ1 to NUZ5.⁷¹

2.39. All of these documents contain a land use table setting out permissible uses within their respective zones, with all other potential uses being not permissible.⁷² They also contain guidance on the desired policy outcomes for a specific zone. For example, the Community Facility Zone Policy lists the following policy outcomes to guide the assessment process:

- Facilitation of social sustainability and inclusion through the provision of accessible community facilities.
- Provision of accessible sites that facilitate civic life and allow community organisations to meet and service the needs of the Canberra community.
- Protection of social and community facilities from competition from other uses.

⁶³ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part D: District Policies, D2 – Belconnen District Policy](#)', pp 6–8.

⁶⁴ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part A: Administration and Governance](#)', p 2.

⁶⁵ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E1 – Residential Zones Policy](#)', p 1.

⁶⁶ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E2 – Commercial Zones Policy](#)', p 1.

⁶⁷ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E3 – Industrial Zones Policy](#)', p 1.

⁶⁸ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E4 – Community Facility Zones Policy](#)', p 1.

⁶⁹ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E5 – Parks and Recreation Zones Policy](#)', p 1.

⁷⁰ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E6 – Transport and Services Zones Policy](#)', p 1.

⁷¹ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E7 – Non-Urban Zones Policy](#)', p 1.

⁷² See, for example: ACT Government, *Territory Plan 2023*, NI2024-540, '[Part E: Zone Policies, E5 – Parks and Recreation Zones Policy](#)', pp 1–2.

- Facilitation of co-location and multi-use community facilities to efficiently use land, located near public transport and appropriate services.
 - Encouragement of adaptable and affordable housing for those in need of care and support.
 - Ensure the adverse impact of traffic, parking, noise and loss of privacy on surrounding residential areas is maintained at acceptable levels.
 - Promotion of active travel and living, including through the provision of safe pedestrian and bicycle access to community facilities.⁷³
- 2.40. Each zone policy also contains a series of specific assessment outcomes relating to:
- urban structure and natural systems;
 - site and land use;
 - access and movement;
 - public space and amenity;
 - built form and building design;
 - sustainability and environment; and
 - parking, services and utility.⁷⁴
- 2.41. Zone policies also set out a series of assessment requirements which ‘set the mandatory development controls’ for zones.⁷⁵ For example, the Residential Zone Policy sets out development controls that apply across the full range of residential zones covering matters such as site coverage, building height, permissible number of storeys, housing density and minimum block area, secondary residences and redevelopment.⁷⁶

Other policies

- 2.42. Part F of the Territory Plan contains two parts. The first is the Subdivision Policy, which is relevant in all zones and ‘applies to development proposing subdivision, including unit title subdivision, boundary adjustments, consolidations and the creation of new blocks’.⁷⁷
- 2.43. It seeks to provide for the following policy outcomes:
- Patterns of subdivision which are orderly and responsive to the surroundings, relevant zone outcomes, and environmental features.
 - Functional and usable parcels of land that are connected to utilities, infrastructure and public spaces.

⁷³ ACT Government, *Territory Plan 2023*, NI2024-540, [‘Part E: Zone Policies, E4 – Community Facility Zones Policy’](#), p 2.

⁷⁴ See, for example: ACT Government, *Territory Plan 2023*, NI2023-540, [‘Part E: Zone Policies, E3 – Industrial Zones Policy’](#), pp 3–4.

⁷⁵ ACT Government, *Territory Plan 2023*, NI2023-540, [‘Part E: Zone Policies, E1 – Residential Zones Policy’](#), p 5.

⁷⁶ ACT Government, *Territory Plan 2023*, NI2023-540, [‘Part E: Zone Policies, E1 – Residential Zones Policy’](#), pp 5–7.

⁷⁷ ACT Government, *Territory Plan 2023*, NI2023-540, [‘Part F: Other Policies, F1 – Subdivision Policy’](#), p 1.

- Social, environmental and planning outcomes that are high quality.
 - Excellent future opportunities that are suitable for the current or potential future zoning of the land.⁷⁸
- 2.44. Like with the other policies listed above, the Subdivision Policy contains a set of specific development outcomes grouped under the same themes listed above. Development proposals involving subdivision of land are required to demonstrate consistency with these outcomes.⁷⁹ The Subdivision Policy also includes a set of mandatory assessment requirements.⁸⁰
- 2.45. The final document under Part F is the Leasing Variation Policy. This applies across all zones in cases where varying a Crown lease is proposed as part of a development. It seeks to ensure that the new use is suitable for the proposed site and has minimal impact on surrounding areas. Lease variations are assessed in conjunction with the policy outcomes from the district and zone policies.⁸¹

Variation 369

- 2.46. In addition to the documents outlined above, part of the current inquiry is to examine Variation 369 to the Territory Plan, which was approved by the Minister for Planning and Land Management in May 2022 and relates to living infrastructure on development sites in the ACT. Variation 369 set minimum limits for tree coverage in residential zoned land to support implementation of the ACT Living Infrastructure Plan, which seeks to achieve overall 30 per cent tree canopy and 30 per cent permeable surfaces in urban areas by 2045.⁸²
- 2.47. Under the new planning system, these living infrastructure targets have been implemented as requirements for tree coverage for residential developments, developments in commercial and community facility zones, and in new subdivisions. According to the EPSDD website:

Single homes in the ACT must have a certain amount of trees planted. There are also provisions for tree shade for compact, mid-sized and large residential blocks. Multi-unit buildings need at least a 15% tree shade in RZ1-2 zones, and at least 20% canopy cover for multi-unit development in RZ3-5 zones.⁸³

⁷⁸ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part F: Other Policies, F1 – Subdivision Policy](#)', p 1.

⁷⁹ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part F: Other Policies, F1 – Subdivision Policy](#)', p.1.

⁸⁰ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part F: Other Policies, F1 – Subdivision Policy](#)', pp 3–5.

⁸¹ ACT Government, *Territory Plan 2023*, NI2024-540, '[Part F: Other Policies, F2 – Lease Variation Policy](#)', p 1.

⁸² ACT Government Environment, Planning and Sustainable Development Directorate, [Living infrastructure](#) (accessed 25 February 2024).

⁸³ ACT Government Environment, Planning and Sustainable Development Directorate, [Living infrastructure](#) (accessed 25 February 2024).

3. Matters considered

- 3.1. This chapter sets out the issues raised on the Territory Plan in evidence received by the Committee in submissions, exhibits and at the public hearing. While stakeholder feedback addressed various aspects of the Territory Plan, most of the commentary focussed on the following key areas:
- Territory Plan coherence and clarity;
 - governance and administration;
 - planning matters, including the RZ1 dual-occupancy policy and living infrastructure requirements;
 - environment and sustainability issues; and
 - miscellaneous issues.
- 3.2. These issues are examined in further detail below, along with the Committee's views and recommendations.

Support for outcomes-based planning

- 3.3. A small number of witnesses expressed to the Committee support for the concept of an outcomes-based system (otherwise known as a performance-based system).
- 3.4. The Property Council of Australia (ACT & Capital Region) supported the innovation that outcome-based planning supposedly encourages:

With the outcomes-based approach, unlike the rules-based one, which was the tick box, tick box, tick box, get it approved and move on, the outcomes-based approach allows you to be quite innovative and inventive with the way that you want to do your particular development or your particular design et cetera. There is that benefit, which I think is seen in a positive light...⁸⁴

- 3.5. The Property Council also felt that the previous rules-based system did not lend itself to ambitious developments or good outcomes:

Yes. It was not very ambitious. There were not necessarily good outcomes. It was there to protect from that, and I do not think it did that. I think it created this development by numbers, whereas the outcomes system actually allows for more site responsive and cohesive development. If you are comparing the two systems, you would find that probably the rules-based system did not push for the quality of outcomes. The outcomes-based system will push for greater quality, and I think

⁸⁴ Mr Shane Martin, Executive Director, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2023, p 144.

it is about the consistency of the authority's decisions and how they work through that.⁸⁵

- 3.6. This was echoed by Ms Natalia Anderson of the Planning Institute of Australia (ACT Division):

The previous system, with the rules and criteria based system, was very binary. It was black and white. If you built this, you got it approved and that was it. It was simple, but it meant that, if you had the opportunity to do better or you wanted to, you could not.⁸⁶

- 3.7. Mr Michael Hopkins of the Master Builders Association of the ACT expressed his support for an outcomes-based system in similar terms:

I will make a few points. Firstly, the consistent feedback from our members over a number of years was that they were frustrated by the rules-based system that previously existed because it did not allow innovative ideas to be supported. That is why we support the outcomes-based focus.⁸⁷

- 3.8. Both Mr Lachlan Butler of the Belconnen Community Council and Mr Richard Nash were supportive of outcomes-based planning in principle and thought it had potential.⁸⁸

Territory Plan coherence and clarity

- 3.9. Despite the above indications of support for the concept of outcomes-based planning, the Committee largely observed that most witnesses and submissions to the inquiry seemed to be in broad agreement that the Territory Plan, its supporting documents and therefore the new outcomes-based planning system was not cohesive and clear.

- 3.10. In making this observation, the Committee notes that section 49 of the *Planning Act 2023* provides for the Territory Planning Authority to endeavour to make the plan easy to understand, and that the purpose of supporting material is to help readers understand and apply the Territory Plan:

49 Format of territory plan and supporting material

- (1) In preparing the territory plan, the territory planning authority must endeavour to make the territory plan, and any amendments of the plan, easy for users of the plan to read and understand.

⁸⁵ Ms Arabella Rohde, Vice-President, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2023, p 144.

⁸⁶ Ms Natalia Anderson, President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, pp 119–120.

⁸⁷ Mr Michael Hopkins, Chief Executive Officer, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 131.

⁸⁸ See, for example: Mr Lachlan Butler, Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2023, p 77. Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Committee Hansard*, 6 December 2023, p 46.

- (2) The territory plan may be supported by background material, guides, advisory notes or anything else (the supporting material) that the territory planning authority considers will help readers to understand and apply the territory plan.⁸⁹

Navigation and readability

- 3.11. A number of witnesses also indicated to the Committee that the new Territory Plan was confusing and inefficient when it came to navigation and finding relevant connected information.

- 3.12. Ms Sarah Sharp indicated that the Territory Plan was difficult to navigate and search for information.⁹⁰ For example, in relation to protecting off-reserve areas:

I found it very difficult to find. In the old Territory Plan you could go to a particular land zone type and it had a number of objectives as to what had to be done. That is still not clear. But, at the same time, it does not seem to have changed terribly much. You have got reserved areas protected. You have got a category called “special protected reserves”. I think that is a category that already exists, and that maybe could be a sort of subcategory for environmental sites, ecological sites—and probably heritage sites, at least, or other scientific sites.⁹¹

- 3.13. This was reiterated in the Friends of Grasslands submission:

Principles of good consultation should clearly and openly clarify key factors in any development, so that community and others can readily determine what responses to consultation are required to address issues of concern. Frequently it takes an inordinate amount of time to find the relevant documents, which are often not named in such a way to describe the information they contain.⁹²

- 3.14. Mr Mark Howden of the ACT Climate Change Council had a similar experience trying to navigate the Territory Plan:

I will toss a few comments in. Before I start with answering that particular question, I have to say that as someone coming in, to some extent cold, into this, it was a really hard space to navigate. There was supposed to be an overview plan—which has disappeared—of the plan, so that link does not work anymore. Then the way it is sort of structured where you have the district guidance, the guidelines and the metro and big driver thing and then the specifications, and it is all over the place. It is actually really quite difficult to navigate coming in cold, so being able to provide an overall perspective in a forum like this is actually quite difficult because of the nature in which the information is distributed across the

⁸⁹ *Planning Act 2023*, s 49.

⁹⁰ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, pp 95–96.

⁹¹ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 96.

⁹² Friends of Grasslands, *Submission 24*, p 3.

plan. That is one comment there. That does not take away from the desirability of going down to district zoning and district strategies, which I think is a good idea.⁹³

- 3.15. Ryan Hemsley of Molonglo Valley Community Forum similarly found the new system confusing and uncertain in many respects, despite considering himself a well-informed individual and the range of information made available by EPSDD:

I mean, genuinely. I consider myself to be an above average informed person as far as these new territory plan rules, criteria, assessment outcomes, technical specifications, zoning policies, et cetera are concerned. I have been involved in this planning review and reform project since it started circa 2019 I believe. And I must admit, I am still not entirely sure how a new DA is put together. I am actually regularly on the DA page waiting for that first new DA under the new system to come in to see what it looks like.

If you want a copy of the template you have to reach out to someone at EPSDD. It is not readily available. There are barriers in place for people who want to learn more about the system. Not everyone is going to want to rock up to a virtual online training session to learn about how the system works. There needs to be easy to understand stuff, which is easily accessible, that outlines how the new system will work. There is a lot of information out there; I am just not sure how much of it is particularly useful. Certainly, from my perspective as the convenor of a community group, I will just be waiting to see what first DA looks like: how it is processed, what decision making goes into the various discretionary new elements of the system.⁹⁴

- 3.16. Mr Richard Nash also felt the navigation of documents was unclear, even for seasoned planners:

The level of documentation has increased, and the relationship between documents is not self-evident for newcomers (and in some cases experienced operators). I think this will be challenging for the broader community to understand the process.⁹⁵

- 3.17. Ainslie Residents Association commented in their submission that ‘many of the existing planning rules have been just reorganised into different documents outside of the Territory Plan or removed entirely’. They also commented ‘We generally feel the new proposed planning system is significantly less clear than the existing system and the uncertainties will likely to result in more arguments between developers and surrounding landowners’.⁹⁶

- 3.18. Former planner Mr Richard Johnston also argued that the new Territory Planning system is too complex and has instead planning made more difficult and obscure.⁹⁷

⁹³ Mr Mark Howden, Chair, ACT Climate Change Council, *Committee Hansard*, 7 December 2023, pp 107–108.

⁹⁴ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, pp 77–78.

⁹⁵ Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Exhibit 31*, p1.

⁹⁶ Ainslie Residents’ Association, *Submission 8*, p 3.

⁹⁷ Mr Richard Johnston, *Committee Hansard*, 6 December 2023, p 33

- 3.19. Mr Tony Trobe concurred⁹⁸, and later argued that rather than simplifying the planning system, the new Territory Plan has done the opposite:

The opposite has happened. I have been to at least six of the seminars and said, “I really don’t know where it is.” Even trying to find stuff like dictionaries and bushfire codes—all that stuff. Where is it all? You probably need three wheelbarrows.⁹⁹

- 3.20. The Inner South Canberra Community Council echoed this sentiment:

The Government’s aims for the new planning system are to deliver a planning system that is clear, easy to use and that facilitates the long-term growth and development of Canberra while maintaining its valued character. The ISCCC’s view is that the new planning system will not achieve that aim.¹⁰⁰

- 3.21. The Australian Institute of Landscape Architects (ACT Chapter) stated ambiguity of language as a potential problem:

The ambiguity of language - whilst prescriptive, allows for misinterpretation and needs to be more didactic. If the ACT Government through this process is intending to enhance community benefit and encourage innovative outcomes they need to ensure their vision is clear, that the quantity, quality is clear and 'taste' is left to the individual's interpretation. Likewise, if the intent is outcome focused, we remain unclear as to the assessment process of how innovative ideas presented will be reviewed and what markers they will be assessed against.¹⁰¹

- 3.22. But the Australian Institute of Architects (ACT Chapter) also felt that the documents were too prescriptive in some cases:

Innovation needs to be encouraged and can thrive within a strong and clear base of directives and vision objectives. In some cases the documents are too prescriptive so as not to stunt innovation, or too ambiguous and lack clarity.¹⁰²

- 3.23. They also observed repetition of information across the District Strategies:

As an overall, the documents whilst large are repetitive across the districts, with only a small portion relating directly to the individual districts. The documents are difficult to follow and do not identify a clear vision to confidently allow for an outcomes-based planning solution of certainty and innovation.¹⁰³

- 3.24. Ms Sarah Sharp of the Friends of Grasslands expressed concerns around clarity of the language used in the *Biodiversity Sensitive Urban Design Guide*, saying to the Committee ‘I think the guidelines are fantastic, although they are very verbose. I would love to see a

⁹⁸ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 33.

⁹⁹ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 34.

¹⁰⁰ Inner South Canberra Community Council, *Exhibit 5*, p 1.

¹⁰¹ Australian Institute of Landscape Architects ACT, *Exhibit 29*, p 2.

¹⁰² Australian Institute of Landscape Architects ACT, *Exhibit 29*, p 2.

¹⁰³ Australian Institute of Landscape Architects ACT, *Exhibit 29*, p 4.

summary of them and some of the other documents so that it is easier for people to actually find the key information'.¹⁰⁴ Similarly, the Friends of Grasslands submission wrote: 'There is a significant lack of clarity about how the two new defined categories, the 'blue-green network' and 'conservation areas', will be protected, as mandated'.¹⁰⁵

3.25. Ms Sharp further expanded on these concerns:

No. Taking it back much further, what I would like to see is that these areas are identified up-front, right now. We have got various things under various names. There is the blue-green network. There are the conservation areas. Neither of those are really well defined as to what they are, so intuiting what is in them or trying to interpret what is in the blue green is everything from a highly recreational area right through to areas that are of high conservation value.

I am concerned that there are lot of words in these sorts of documents that sound fantastic. The Biodiversity Sensitive Urban Design Guide is fantastic. I have not been through the other ones, I have just concentrated on that one, but the words are fantastic. There are really good intentions, but I think it should be absolutely clear what needs to be achieved. There is the Planning Bill, the Territory Plan and the guidelines, but nothing really says what we are trying to achieve and then how we are going to go about it.

I think those areas need to be identified up-front. They need to have clear criteria against them so that it is absolutely clear to everyone. I think it is really important that this whole process is very, very transparent so that anyone who goes into an area says, "This area is going to be retained, and it is going to be retained as some form of reserve protection." Legislated protection, I am meaning.¹⁰⁶

Committee comment

- 3.26. The Committee considered evidence about the need for clear protection for areas of nature in the new planning system. The Committee also considered concerns raised about environmental assessment and the need for holistic planning decisions that consider the environment.
- 3.27. The Committee is of the view that, despite the inclusion of the administration document at the front of the Territory Plan, and other guidance documents, the operation of the new planning system, particularly in relation to the development application process, is still unclear to many Canberrans. More must be done by the Land and Planning Authority to communicate in clearer terms the operation of the new Territory Plan.
- 3.28. The Committee is also of the view that navigating and searching the Territory Plan is currently confusing and difficult for many Canberrans, even seasoned planners. The Committee also acknowledges that planning systems are complex by their nature and that this is a new system that people are experiencing for the first time. With this in mind, the

¹⁰⁴ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 91.

¹⁰⁵ Friends of Grasslands, *Submission 24*, p 2.

¹⁰⁶ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 92.

Government should review the existing structure and layout of the Territory Plan and supporting documentation with a view to simplifying and clarifying searching and navigation, including ensuring the availability of relevant forms and templates on the website.

Recommendation 1

The Committee recommends that the ACT Government look to simplify and clarify searching and navigation as soon as possible.

Recommendation 2

The Committee recommends that the Planning Authority ensure that Development Application templates be made available online.

Design Guides and Technical specifications

- 3.29. The Committee observed that confusion around the operation of the Territory Plan was most prominent in the interaction of the Territory Plan's supporting material - the Design Guides and Technical Specifications – with the rest of the Plan.

Role of supporting materials

- 3.30. Part A - Administration of the Territory Plan, states that 'Supporting materials do not form part of the Territory Plan, but may be 'called up' by policies within the Territory Plan'.¹⁰⁷
- 3.31. The ACT Government's Territory Plan website similarly outlines the supposed relationship between the Territory Plan and supporting documents, with the technical specifications and design guides serving as important guidance:

The interim Territory Plan also has supporting documents to provide more guidance and clarity. This includes technical specifications. These are notifiable instruments and can be used possible solutions. They can also provide guidance for aspects of a development proposal.¹⁰⁸

- 3.32. The role of the Design Guides and Technical Specifications was also outlined during the public hearing by the ACT Government Architect:

I have been really keen to see documents such as the design guides develop. The previous system was binary: do you meet it or don't you? You know that delivering a development is a highly complex and nuanced process, so the design guides spell out the qualities that exemplify good design and how a development can meet those. The design guides articulate the valuable qualities that we are looking for in developments. They address elements on the outside of the building—how the building responds to its context—and the characteristics it

¹⁰⁷ ACT Government, *Territory Plan 2023*, NI2023-540, '[Part A: Administration and Governance](#)', p 3.

¹⁰⁸ ACT Government Environment, Planning and Sustainable Development Directorate, [The Territory Plan](#) (accessed 18 January 2024).

provides in the public realm. Can you find the front door? Is there an accessible path? There are fundamental aspects like that. The design guide is also about amenity issues on the inside: the ability to have natural ventilation, daylight, and a common corridor that is not 100 metres long. There are fundamental qualities like that.

There is a sibling document which has the technical specifications. That document provides examples of metrics that can solve a particular problem. Fundamental to the provision of design guides and technical specifications is that we have listened to industry, and they want a system that allows the potential for excellence and allows the potential for a proponent to provide a different way of solving a problem. It moves away from having a mandated metric and says, “Here is an example of how a metric solves it, but, if you would like to demonstrate an alternative solution, bring it to us.”¹⁰⁹

- 3.33. The opening page of each Technical Specification also outlines the role of the technical specifications as guidance documents and benchmarks for compliance with the new Territory Plan:

Planning technical specifications are used as a possible solution or to provide guidance for identified aspects of a development proposal. The specifications may also be used as a reference or benchmark in the preparation and assessment of development proposals to demonstrate compliance with the assessment outcomes, and the Territory Plan.

Where a proposed development complies with a relevant provision in the planning technical specifications and the development comprehensively addresses the assessment outcome, further assessment regarding those specific provisions will not be required.¹¹⁰

- 3.34. In the ACT Territory Plan explanatory report, the ACT Government articulates the reason for structuring the Territory Plan this way:

Two important changes made with the new Territory Plan involve its structure and how the planning requirements have been incorporated into it to achieve an outcomes focussed planning system. By restructuring the components of the Plan, introducing supporting material such as design guides and planning technical specifications and focusing on policy outcomes and assessment requirements, the focus for development assessment is clearly on the impacts and outcomes of a development, rather than a compliance approach.¹¹¹

¹⁰⁹ Ms Catherine Townsend, ACT Government Architect, *Committee Hansard*, 7 December 2023, p 170.

¹¹⁰ See, for example: NI2023-544: [Planning \(Gungahlin District\) Technical Specifications](#), p 5; NI2023-733: [Planning \(Belconnen District\) Technical Specifications 2023 \(No 2\)](#), p 6; NI2023-735: [Planning \(Inner North and City District\) Technical Specifications 2023 \(No 2\)](#), p 6; NI2023-736: [Planning \(Inner South District\) Technical Specifications 2023 \(No 2\)](#), p 6;

¹¹¹ ACT Government, [ACT Territory Plan Explanatory Report](#), p 7.

Rules or no rules

- 3.35. Despite the above guidance, there appeared to be confusion over the status of the requirements outlined in the Design Guides and Technical Specifications, and the extent to which they are mandatory rules or just mere guidance.
- 3.36. Some industry representatives and experts held the view that the new planning system, despite aiming to be an outcomes-based system, still retained through the design guides and technical specifications some mandatory rules and requirements that were inconsistent with the premise of outcomes-based planning.
- 3.37. Tony Trobe argued the new system was effectively a hybrid system that tried to blend elements of both rules-based and performance-based systems, which would only create unnecessary complexity and uncertainty:

I suppose this goes back to the future, before the Territory Plan was brought in. Richard would know this: it was always a performance based system. The biggest objects of the Territory Plan, or the planning system then, were to achieve outcomes, and everything else could be related back to that. I remember going to ACAT and arguing for the top-order criterion and being successful in those sorts of situations. I think that has now lent itself to a very tricky situation. Now we seem to be in a hybrid situation where we are trying to have a performance based code but we still have the mandatory rules. I think you need to decide whether you are going to have a performance code or not.

The way it is set up now means that it is going to be a huge impost on the Planning Authority. I already have four projects I need to talk to them about, because I do not know whether I can have a wall that is 2.1 metres tall on the boundary, or whatever it is, that does not meet the numeric codes. But it is a performance based document. I cannot make a decision on it; the certifier cannot make a decision on it. All these things are going to go to ACTPLA for decisions, but they said that they do not want to have pre application meetings, so where does that leave us? Nowhere. We have to take a gamble that it will be approved.¹¹²

- 3.38. Mr Trobe further explained his view that retaining mandatory and arbitrary rules can lead to perverse outcomes:

I can give you a good example. I have a project in Hackett. The guy has built it himself. It is 300 millimetres outside of the height limit because he struck rock during the project, and now the Planning Authority are refusing to approve the project because the technical definition of a basement is not met. It achieves everything else in the code. I do not know—are they going to make him demolish this beautiful dual occupancy he has built in Hackett? That is the sort of unintended consequence. Everybody can say, “This does not make any sense,” but, because of rules—the same applies to heritage rules—you get into really odd

¹¹² Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 31.

positions where common sense does not apply anymore. You have to be very careful about the mandatory rules.

If you are going for a performance based system, what is the point? It is either one or the other. They have taken some out. They have taken the 50 per cent out, but they put down a 40 per cent footprint. That is going to squish the houses up. Bigger two storey houses are going to be the go. I would like to talk about the solar fence rules at some point. All that sort of stuff is problematic. No one has stitched all those little pieces together to see what the outcome is, which goes back to your original question: how can you assess what the outcomes are going to be in the long term?¹¹³

- 3.39. The Property Council of Australia was similarly concerned about the apparent inconsistency of retaining some rules in what is supposed to be an outcomes-based system:

The current plan aims to be outcomes focussed. An outcomes focused plan should remove many of the site-specific requirements and inconsistencies from the current Territory Plan, if the move is to focus on planning and design outcomes. The plan has inconsistently adopted controls from some recent precinct codes but not others depending on the district or suburb.¹¹⁴

- 3.40. In a discussion about the Territory Plan and housing affordability, representatives of the Housing Industry Association, while supportive of an outcomes-based system, similarly expressed worry over the retention of rules in the system:

...As an opening statement, we support the notion of an outcome-focused system and the mindset behind the plan. When it comes down to it, where the new plan system falls down is where it diverts from that process and starts introducing arbitrary controls throughout the plan...¹¹⁵

- 3.41. This was expanded upon by Mr Weller's colleague, Ms Nichelle Jackson:

Thank you, Greg. We had a think about this before today and had a look at what we thought an outcomes focus meant. We looked at outcomes for the ACT Government and outcomes for the city of Canberra but also outcomes for the industry and how those things all work together at different levels. In looking at the new Territory Plan, particularly for residential development, we looked at some issues that we feel constrain an outcomes focus under the new system in its intent. Some of those quantitative controls seem, in our view, to provide some constraints that could work against the provision of affordable housing in particular areas—the key one being the site coverage mandatory control under

¹¹³ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 32.

¹¹⁴ Property Council of Australia, *Exhibit 12*, p 2.

¹¹⁵ Mr Craig Weller, Executive Director, Housing Industry Association ACT and Southern NSW, *Committee Hansard*, 7 December 2023, p 125.

the residential zones policy. It specifies different rates of site coverage for different sized blocks.

To give an example, a mid-sized block of 450 square metres has a site coverage limit of 60 per cent, which gives you 270 square metres of building area to work with. Whereas, if you look at a large size block, for instance 600 square metres, it has a 40 per cent site coverage control, which permits you 240 square metres—so 30 square metres less. So there is a bit of, I guess, a chunky stepping in terms of the site coverage controls, which perhaps unfairly prejudices some mid-size and large blocks compared to others. Perhaps that could be looked at. It is a bit of a gap in opportunity for what could be built on some of those smaller large blocks, so to speak. Another one is the 120 square metre control on an RZ1 block. I am sure you have heard that a few times today.¹¹⁶

- 3.42. Mr Tim Field also expressed concern about having rules in the new system. However, he instead warned that keeping mandatory rules in the planning system would lead to a situation where planners and developers would simply build to the minimum standard specified in the Territory Plan:

... My experience as a cynical bureaucrat running decision-making programs over the years is that you end up falling back—both proponents and decision-makers—grasping for certainty. The decision-makers in ACTPLA are going to have a hell of a job dealing with this stuff. For every DA, I think there are 12 elements that they have to consider, all of them equal. Richard has pointed out that the housing guide has something like 140 items in it. God knows how you do all that, and you end up falling back to safe and secure. Some of that will evolve. They will be stumbling through the tribunals and the court to see how that goes, because, at the end of the day, time is money. If you are a developer, you will start falling back on cliches, if you like, because you know it will get a tick.¹¹⁷

- 3.43. This was supported by Mr Richard Johnston, who suggested that in the absence of clear guidance initially, rules would be reinvented and eventually become *de facto* rules:

I think what will happen—and I am reflecting on what Tony and Tim said—is that there will have to be reinvention of rules and they will probably start by being *de facto* rules. There will be a huge amount of pressure put on the assessment officers in ACTPLA, as Tony said, and they are presented with a system which does not really give them a lot of guidance.¹¹⁸

- 3.44. An outlying opinion was held by Kip Tanner, who argued that any good planning system needs a balance between certainty and flexibility:

With respect to the question about rules versus not rules, from project to project it is quite different. If you are working with somebody who is trying to deliver an

¹¹⁶ Ms Nichelle Jackson, Committee Members, Housing Industry Association ACT and Southern NSW, *Committee Hansard*, 7 December 2023, pp 125–126.

¹¹⁷ Mr Tim Field, *Committee Hansard*, 6 December 2023, p 33.

¹¹⁸ Mr Richard Johnston, *Committee Hansard*, 6 December 2023, p 33.

affordable housing outcome, often they will be happier with a rules based system because they can put a DA in, get it through in minimal time, with a whole lot of confidence that it is going to be approved, and deliver. If you are working with somebody who is building their personal legacy project and wants to do something amazing, they love having the flexibility to introduce innovation and those sorts of things. Any good planning system involves a balance between the two.¹¹⁹

3.45. By contrast, there was a greater sense from witnesses that the design guides and technical specifications status was vague and were not mandatory.

3.46. Stephanie Booker observed that in relation to the language used in Part A – Administration of the Territory Plan, it is unclear in the Territory Plan what ‘called up’ means.¹²⁰

3.47. The Conservation Council similarly observed:

The Territory Plan makes reference to planning technical specifications to be used as a possible solution or to provide guidance for identified aspects of a development proposal. Planning technical specifications may also be used as a reference or benchmark for planning matters in the preparation and assessment of development proposals to demonstrate compliance with the Territory Plan. There needs to be clearer language as to the utility of technical specifications. The wording ‘may be used’ make it unclear as to whether it is a benchmark or whether it needs to be adhered to at all.¹²¹

3.48. Ms Booker likewise found aspects of the role of technical specifications in relation to the Territory Plan unclear:

The role of technical specifications is less clear. The Territory Plan suggests that technical specifications be used as a possible solution or to provide guidance for identified aspects of a development proposal. Technical specifications may also be used as a reference or benchmark for planning matters in the preparation and assessment of development proposals to demonstrate compliance with the Territory Plan. The use of ‘may’ obviously gives the decision maker (and developer) some wriggle room in the application of these technical specifications to a development. This ‘wriggle room’ doesn’t automatically mean that technical specifications are a minimum threshold though – the use of the word ‘may’ suggests that they could not be used at all. If technical specifications are a benchmark to be exceeded this must be explicit. Otherwise, technical specifications may not be considered at all.¹²²

¹¹⁹ Mr Christopher (Kip) Tanner, Director, Planner & Environmental Engineer, Planit Strategic Pty Ltd, *Committee Hansard*, 6 December 2023, p 48.

¹²⁰ Ms Stephanie Booker, *Submission 25*, p 1.

¹²¹ Conservation Council ACT Region, *Submission 21*, p 3.

¹²² Ms Stephanie Booker, *Submission 25*, p 2.

- 3.49. Both the Conservation Council and Stephanie Booker advocated for greater clarification of the relationship between the Territory Plan and the design guides and technical specifications.¹²³
- 3.50. The confusing status of the design guides and technical specifications was exemplified more broadly through the view held by Residents Associations, Community Councils and some community organisations that the Territory Plan and its supporting documents were lacking mandatory ‘rules’.
- 3.51. Friends of Grasslands identified a lack of rules or specifications in the design guides relating to compliance and protection of biodiversity.¹²⁴
- 3.52. Ms Fiona Carrick of Woden Valley Community Council felt that the new system had done away with rules:
- The old code allowed for the rules, so it gave protections to the community—fundamental protections with overlooking, privacy, overshadowing and tree canopy. The old code allowed for qualitative outcomes as well, in addition. We had the rules and protections, plus we had the ability to have design outcomes and quality outcomes. Now we are taking away the rules. We are taking away the protections for the people...¹²⁵
- 3.53. Sue Tongue was sceptical that the new system would be fit for purpose for Canberra’s future needs given, in her perspective, it largely removed rule-based decision-making:
- The policy goal of the new system is outcomes-based decision making to give flexibility and allow a more responsive planning system to meet the needs of a growing city. The new system largely removes rule-based decision making and replaces it with discretionary decision making. Experience and research show that this will not produce a system that is able to meet the needs of the city, particularly at a time of climate change.¹²⁶
- 3.54. Ainslie Residents Association held similar concerns in relation to community facility zoned land, arguing that the new Territory Plan does not contain a list of prohibited developments for CFZ sites, which they suggested was valuable because ‘it provided a clear indication of the developments that were not considered to be community facilities’.¹²⁷
- 3.55. Ainslie Residents Association also identified that rules relating to the separation of childcare centres from safety hazards such as water bodies and roads, is not in the new Territory Plan, and suggested that clear rules be inserted in the Territory Plan to ensure the safety of children.¹²⁸

¹²³ Ms Stephanie Booker, *Submission 25*, p 2; Conservation Council ACT Region, *Submission 21*, pp 1–3.

¹²⁴ Friends of Grasslands, *Submission 24*, p 2.

¹²⁵ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2023, p 5.

¹²⁶ Ms Sue Tongue, *Submission 22*, p 2.

¹²⁷ Ainslie Residents Association, *Submission 8*, p 2.

¹²⁸ Ainslie Residents Association, *Submission 8*, p 3.

- 3.56. The Griffith Narrabundah Community Association expressed a worry that the system had moved too far away from a rules-based system, and that important planning considerations would be ignored if not given mandatory status:

The extent of our government's delegation of planning is now clear. This relinquishment of control and responsibility, and introduction of an untried system, comes at a time when it is imperative that our city responds appropriately to climate change. Yet the Territory Plan and its supporting documents, by going too far in swinging deregulation away from a rule-based system, have removed necessary mandatory controls to prevent heat islands, preserve canopy cover and open green spaces and ensure the maximum use of renewable energy, and vitiated any possibility of mandatory passive solar design requirements.¹²⁹

- 3.57. This was re-emphasised at the public hearing by Dr David Denham of the Griffith Narrabundah Community Association, who expressed a fear that if the new planning system's rules and requirements lack mandatory status, they would be ignored.¹³⁰

- 3.58. Ms Carrick too feared developers pushing or ignoring planning requirements if they were not mandatory and instead considered mere guidance:

I would like to say that, with trees, there are various aspects that are now in the guidance. You listed off a range of guides. How will there be compliance with that guidance when it is just guidance? That is the question. It is a slippery slope. As developers get away with things—because they will; it is the nature of them; they want to get as much yield and as much money out of a block as they can—and as things slip through, which they will, and precedents are set, is it going to be a slippery slope of the quality of these things, when it is very difficult for the community to challenge them or protect their rights in ACAT?¹³¹

- 3.59. Mr Ronald Brent of Dickson Residents Group similarly thought it was important to entrench elements of good design in the planning system:

I would also note, given that the technical guidelines are no longer mandatory, things like overshadowing, which are an important part of creating light and amenable environment, will disappear. And if we cannot maintain some of those things under the existing system, because it is stacked against good design, I think it is going to be more problematic under the new system.¹³²

Signs code example

- 3.60. A very specific example of the removal of rules was raised by Ernestine Kirsch of the Braddon Collective in relation to the new signs code:

¹²⁹ Griffith Narrabundah Community Association, *Exhibit 4*, p 1.

¹³⁰ Dr David Denham AM, President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2023, p 15.

¹³¹ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2023, p 9.

¹³² Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, p 19.

Basically, because I am a visual person, this was the Signs General Code which was under the previous regime. I have not tabled that because it is a public document. It is 33 pages long. What we have in the new planning regime is just one assessment outcome in one sentence, which happens to be at the bottom of that piece of paper there, but I will read it out:

12. Any advertising or signs are suitable for their context and do not have a detrimental impact on the surrounding area (for instance due to size or light emission).

That one sentence is carried across all of the zone policies, so it is exactly the same in all of them.¹³³

- 3.61. Ms Kirsch felt that in the absence of clear rules and requirements, the Planning Authority had very little guidance with which to make a decision:

Now, I have said all of that to say that if this DA were submitted now under the new planning regime, a DA would be required. An instrument was created. It is very imaginatively called the Planning (Exempt Development) Signs Development Control Declaration 2023 (No 1). There is a list in that declaration—I put that in my EOI, if you are interested—which says, “For these reasons, this needs a DA,” but when it comes to assessing that DA, we only have that one sentence there. It is a commercial zone. The technical specification for the commercial zone does kick in—that is the tiny little table which is in the bottom right of the handout I have just given you. That is all the Planning Authority has to go by in trying to decide whether this is an appropriate DA and whether this sign is appropriate for the area or not.¹³⁴

- 3.62. Ms Kirsch advocated for mandatory controls to provide clarity of decision-making:

So I guess the reason I am here, the one point I really want to put across today is that sign control should be mandated. There should be assessment requirements within the zone policies, mandated in the zone policies—not tucked away in the technical specifications. They should reinstate the list of factors which were previously criterion 4 and criterion 6 in the Signs General Code, which lists the reasons or the things that need to be looked at. Is this going to impact on a residential area in terms of light spill? I think the terminology is: is it out of keeping with the area and does it protrude beyond the building line? There is a whole list of factors there. And also the safety factors which are in C6, or were in C6, which is to do with, is this going to distract drivers? Is this going to create a hazard?¹³⁵

- 3.63. Concerns around the signs code were also held by Tim Hollo of the Green Institute, who, after noting that Canberra has historically restricted billboards and other public space advertising to ensure that public spaces remain public, wrote: ‘The Signs General Code will

¹³³ Ms Ernestine Kirsch, Member, Braddon Collective, *Committee Hansard*, 7 December 2021, p 147.

¹³⁴ Ms Ernestine Kirsch, Member, Braddon Collective, *Committee Hansard*, 7 December 2023, p 148.

¹³⁵ Ms Ernestine Kirsch, Member, Braddon Collective, *Committee Hansard*, 7 December 2023, p 148.

be superseded by the current reforms, and it is not at all clear whether the new Territory Plan, with its zones and layers, continues this approach of principle, clearly delineating public space for the public, and constraining its privatisation'.¹³⁶

3.64. He argued that the new signs code may inadvertently permit greater public space advertising than was permitted under the previous signs code due to lack of clarity in this space: 'It would be deeply unfortunate if, after explicit proposals to relax the regulatory framework controlling public space advertising were successfully fought off, the new planning regime were to open the floodgates by omission'.¹³⁷

3.65. He proposed that the Territory Plan and Design Guides include 'clear statements that Canberra is and should remain an ad-free city, banning billboard and strictly limited other forms of public space advertising...'¹³⁸

3.66. In response to a Question on Notice around strengthening controls over advertising, Minister Chris Steel pointed out to the Committee that:

...Technical specifications for commercial and industrial zones provide a table that outlines benchmarks for content control, building locational requirements for principal, second party and third-party advertising signage as well as size requirements for signs. These are identical to what was in the signs general code of the previous Territory Plan 2008.

The Technical specifications for all other zones provide guidance on limits on quantity, height, setback and size of signs, with no illuminated or third-party advertising permitted.¹³⁹

Government response to concerns about a lack of rules

3.67. In response to questioning from the Committee that there is a community perception that the new Territory Plan has no rules, the Director-General and Chief Planner, Mr Ben Ponton, rebutted the idea there is an absence of rules in the new planning system:

...The point I would like to make—and I have said this in various forums—is that this idea of no rules is part of the issue. The Territory Plan, and I am sure you have been through it, has a lot of requirements, and it is just a different way that we phrase this. Instead of having hard and fast metrics, after listening to the Canberra community, who were saying there are some things that are not negotiable, in their view, we have incorporated some of those metrics into the plan. But there was still requirements, and they are largely articulated through the design guides. The design guides also give a whole range of examples of how you can meet particular provisions.

¹³⁶ Mr Tim Hollow, Executive Director, The Green Institute, *Exhibit 10*, p 1.

¹³⁷ Mr Tim Hollow, Executive Director, The Green Institute, *Exhibit 10*, p 2.

¹³⁸ Mr Tim Hollow, Executive Director, The Green Institute, *Exhibit 10*, p 2.

¹³⁹ Chris Steel MLA, Minister for Planning, *answer to Question on Notice 6: Signs controls in new planning system* (received 20 December 2023), p 2.

So that is my starting point: it is not that there are no rules. There are not as many metrics, but there are clear requirements with examples of how you can achieve design outcomes...¹⁴⁰

3.68. The Director-General also explained to the Committee that the *Planning Act 2023* requires that the applicant to respond to the design guides, and that the Territory Planning Authority needs to give consideration to not only the design guides, but the response and the advice for the projects that are considered by the Design Review Panel, who also considers the Design Guides. He succinctly noted to the Committee that ‘They are called guides but are not discretionary. They actually have status under the plan’.¹⁴¹

3.69. This is also made clear on the Planning website, which outlined in response to a hypothetical question that ‘Does this mean there are no planning rules anymore?’:

No, proponents must still meet a range of requirements set out in the new Act and the Territory Plan. These rules give both proponents and the community assurance that the Government is still providing a base line for design of the built form.

An applicant will need to demonstrate how their development meets the rules in the Territory Plan (such as height limits). It must also show how the development meets good design outcomes and fits and supports its neighbourhood.

While the Territory Plan has an outcomes focus, it still contains mandatory limits. There will still be cases where these are necessary and deliver the desired planning outcomes. For example, mandatory requirements for building heights and setbacks in residential areas are still in place.¹⁴²

3.70. Indeed, section 166(2)(c) of the *Planning Act 2023* makes clear that a development application must be:

...accompanied by the plans, drawings, specifications, assessments and other information and documents—

(i) sufficient to address each provision of the territory plan relevant to the proposed development; and

(ii) showing how the application meets each mandatory requirement of a provision of the territory plan; and

(iii) stating any condition of a previous development approval that affects the proposed development; and

(iv) showing how the proposed development integrates with the surrounding leases and other approved developments; and

¹⁴⁰ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 168.

¹⁴¹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 169.

¹⁴² ACT Government Environment, Planning and Sustainable Development Directorate, [Planning Act 2023](#) (accessed 10 January 2024).

(v) prescribed for this section; and

(vi) required by the territory plan or another provision of this Act; and

- 3.71. Section 166(4) also states that that the Territory Planning Authority may make guidelines about the preparation of the information and documents mentioned in 166(2)(c).¹⁴³
- 3.72. The *Planning (Minimum Development Application Documentation) Guideline 2024* states that ‘A Development Outcomes Report must be provided for all development applications’, and that ‘The Development Outcomes Report must address all relevant policies (and requirements of entities referred to in the Territory Plan) of the Territory Plan and statutory considerations in the *Planning Act 2023*’.¹⁴⁴
- 3.73. The Guideline also states that ‘Where a development triggers a Design Guide, proponents will need to consider the relevant guides and prepare a design response’. A design response ‘must demonstrate, using written and graphic content, how the proposed development considers the design elements of the design guide and must be endorsed by a professional with experience and expertise relevant to the response, and the type and scale of the development proposed’.¹⁴⁵
- 3.74. The Directorate also highlighted to the Committee at the public hearing that the new system retains the staged assessment model used under the previous planning system, in which decision-making is shared by three to six officers, supported by an assessment advisory panel.¹⁴⁶ This process is outlined in Figure 3 below.

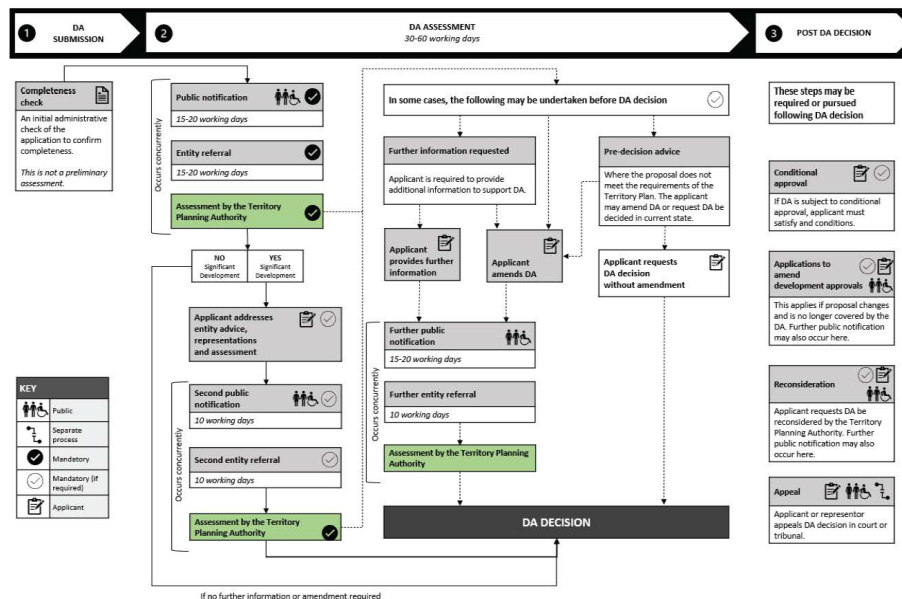


Figure 3: Development Application assessment process [Source: EPSDD [Entity referrals Factsheet](#), p 4.]

¹⁴³ *Planning Act 2023*, s 166(4).

¹⁴⁴ NI2024-40: *Planning (Minimum Development Application Documentation) Guideline 2024*.

¹⁴⁵ NI2024-40: *Planning (Minimum Development Application Documentation) Guideline 2024*.

¹⁴⁶ Mr George Cilliers, Executive Group Manager, Statutory Planning, EPSDD, *Committee Hansard*, 7 December 2023, pp 168–169.

3.75. This reiterated evidenced received previously from the Directorate at a public hearing for its *Inquiry into Annual and Financial Reports 2022-23* in response to a question about how the new planning system will balance encouraging innovative development with certainty in decision-making. The Director-General indicated that the Directorate at the time was looking to instil certainty in decision-making under the new planning system through decisions being made by an assessment panel 'where senior people will provide consistency in decision-making around particular outcome statements'.¹⁴⁷

3.76. In response to a question from the Committee on how trust will be built in the new planning system, then Minister for Planning and Land Management, Mr Mick Gentleman, indicated that trust would hopefully grow as the new Territory Plan is implemented, but also felt that a good base of trust had also been established:

... I suppose that will come through the implementation of the Territory Plan and the changes that we have made. I have seen quite a change in the way the community has responded to the new Territory Plan. There has been quite a lot of support. From June, there was quite a lot of interaction between the planning team and the Canberra community in the development of the new Territory Plan and the district strategies as well. So I think that is a good start to build trust in our new planning system. It is my hope it will grow as we roll out the new Territory Plan and the changes that have been highlighted.¹⁴⁸

3.77. The Director-General, Mr Ben Ponton, added that the EPSD Directorate had been working on an evaluation framework and other work in feeding early observations back into potential changes to improve the system:

I was just going to add that—and I think I mentioned this at the annual report hearings to this committee, that we are also working with the Environment and Planning Forum, which consists of community councils, other industry representatives and professional associations, on developing an evaluation framework. That is separate to the built form—what is actually built—that Access Canberra is working on, but we work very closely with them. We will not actually see anything built for a couple of years going through this system, but we are not wanting to wait until then.

So we will be taking, for conversation into the EPF meeting next week, a draft evaluation framework. We are already starting to do some work internally ahead of that within Mr Cilliers's team, and also through the Government Architect, in terms of looking at what we are seeing and how we can actually feed that back into any potential changes that might be required. I was having a conversation just recently with Ms Townsend, in relation to what the secretariat and the design review panel can do to look at how things are evolving and the impact that the design guides are having through that process.

¹⁴⁷ Mr Ben Ponton, Director-General, EPSDD, *Inquiry into Annual and Financial Reports 2022-23*, *Committee Hansard*, 14 November 2023, p 26.

¹⁴⁸ Mr Mick Gentleman MLA, Minister for Planning and Land Management, *Committee Hansard*, 7 December 2023, p 178.

So I see all of that coming together to allow us to build that trust. But importantly, actually developing that framework with the community as well. It is not just an internal document. That is going to be a key piece... ¹⁴⁹

Committee comment

- 3.78. The Committee is of the view that despite the production of guides and information for the public and industry, it is clear there are contrasting views about whether the new Territory Plan contains rules.
- 3.79. Further guidance and clarification needs to be provided by the Environment, Planning and Sustainable Development Directorate, including a clearer indication as to what requirements are mandatory and which are merely guidance so that both planners and lay people alike can fully understand where mandatory requirements do or do not exist in the Territory Plan.
- 3.80. The Committee is of the view that the relationship of the design guides and technical specifications to the Territory Plan need to be made clearer, and the language used within these documents made more consistent across them to minimise confusion in the community.

Recommendation 3

The Committee recommends that the Territory Planning Authority clarify how the Territory Plan works and how it relates to the Design Guides and technical Specifications.

Location of the supporting material

- 3.81. A small number of submissions also expressed concerns as to why, given the design guides and technical specifications crucial role as 'benchmarks', 'guidance' and in demonstrating compliance, they were not included formally as part of the Territory Plan and are instead merely 'supporting documents'.

- 3.82. The Conservation Council wrote:

It is unclear how and why documents such as design guides and planning specifications, which are both notifiable instruments, do not form part of the Territory Plan. Technical specifications contain the bulk of what was formerly classified as rules in the former Territory Plan and have been referred to as minimum thresholds in present documentation. The design guides have the same, qualitative qualities that criteria had in the former Territory Plan and are now to be taken into consideration by decision makers when deciding a development

¹⁴⁹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, pp 178–179.

application, as set out in in section 186(b) of the Planning Act 2023. Their role is more than as ‘mere’ supporting documents.

The Territory Plan states that “where a proposed development complies with a relevant provision in the design guide and/or planning technical specification and the development comprehensively addresses the outcome, further assessment regarding those assessment outcomes will not be required”.³ Why, given their weighting in the planning assessment process, do they not continue to form part of the Territory Plan? The communication around the use of these documents is confusing.¹⁵⁰

3.83. Ms Stephanie Booker also noted with regards to the design guides in her submission that:

Design guides are clearly the heart of the new planning system and critical to its implementation. Where design guides are applicable they must be considered in demonstrating compliance with assessment outcomes, and design guides must be taken into account by decision makers. It is unclear why such an important feature of our planning system (the qualitative features of the way we develop) is now no longer part of the Territory Plan. The practical implication of these qualitative features being removed from the Territory Plan is that if they are changed, there is no scrutiny by the public or the community.¹⁵¹

Governance and Administration

3.84. The Committee received a range of responses relating to governance of the Territory Plan, and the new planning system it supports. This section examines the feedback received in relation to governance and administration of the Plan, with a particular focus on decision-making, the National Capital Design Review Panel and capability within the ACT Government for implementing the Plan.

Administration and compliance

3.85. The shift to an outcomes-based planning system has raised community concerns about what governance arrangements are in place, and how compliance with the requirements and guidance in the various Territory Plan documents will be ensured.

Trust and decision-making concerns

3.86. Due to the perceived lack of clear rules and the greater discretion held by the Territory Planning Authority, several witnesses felt that the new planning system placed a large degree of trust in Territory Planning Authority as the decision-maker, which raised

¹⁵⁰ Conservation Council ACT Region, *Submission 21*, p 2.

¹⁵¹ Ms Stephanie Booker, *Submission 25*, p 1.

concerns around subjective decision-making and the erosion of certainty, consistency and confidence in the new planning system as a whole.¹⁵²

- 3.87. For instance, the ISCCC argued that the new Territory plan was reliant ‘...on vague non-measurable assessment criteria, gives disproportionate discretion of ACTPLA, reduces Assembly oversight and will not generate the trust and confidence needed to successfully implement the government’s urban infill policies’.¹⁵³
- 3.88. Planner Kip Tanner outlined to the Committee the potentially subjective nature of the assessment process, with different people potentially disagreeing on what is and is not a relevant consideration in a planning decision, introducing a degree of uncertainty:

With all of our DAs, it is a matter of what they are going to be assessed against. There is a series of assessment outcomes that sit in the relevant policies, and those assessment outcomes are subjective.

Assessment outcome No 1 in a lot of the policies says something along the lines of “biodiversity is maintained across the landscape”. Every DA needs to provide a response to that outcome. The thought that I have is that, if I am doing a DA for a new shopfront in a local centre on a little townhouse block that is built side to side, front to back, with a laneway at the back, how am I going to respond to an outcome of maintaining biodiversity across the landscape? In that example, I would probably say, “This is just not relevant. It’s not a relevant consideration to a row of local centre blocks that are all built front to back.” But somebody from the community might take a different view and take my DA to ACAT on the basis of that.

There are a lot of outcomes that clearly have good intentions, and I pretty much agree with all of the outcomes that are written down; but, in some cases, when you are thinking about a particular DA, they may or may not be applicable. With the way that you can use them for that DA, we will end up needing to test them or understand how it is really going to work.¹⁵⁴

- 3.89. Fellow planner Richard Nash similarly argued that the new system has introduced further subjectivity:

It is about establishing what those triggers might be. I agree with Kip. Another element to it is the subjectivity. Two weeks ago, we had a system that was largely rule and criteria based. With a third party appeal, sometimes you would get a decision by the tribunal that you did not expect. With the added level of subjectivity, it goes from being a trained professional planner who is assessing and deciding a decision. It then goes to the tribunal, and it is decided by a senior

¹⁵² See, for example: Sue Tongue, *Submission 22*, p 2; Dickson Residents Group, *Submission 7*, p 1; Inner South Canberra Community Council, *Exhibit 5*, p 1; Mr Christopher (Kip) Tanner, Director, Planner & Environmental Engineer, Planit Strategic Pty Ltd, *Committee Hansard*, 6 December 2023, pp 49–50; Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Committee Hansard*, 6 December 2023, p 50.

¹⁵³ Inner South Canberra Community Council, *Exhibit 5*, p 1.

¹⁵⁴ Mr Christopher (Kip) Tanner, Director, Planner & Environmental Engineer, Planit Strategic Pty Ltd, *Committee Hansard*, 6 December 2023, pp 49–50.

member. With the subjectivity—once again, it is too early to decide—it is something that has occurred to me that could be a problem.¹⁵⁵

3.90. Ms Anderson too had concerns around subjectivity in the new approval process:

Moving more towards your question, the wider profession can definitely do it. I have a worry that the training that has been happening in EPSDD—we are not aware of what that training is, so that is probably one thing to add as well—could be lacking. I do not know, so I cannot say that, 100 per cent, it is lacking. It is a whole new way of thinking about how to assess development. There are no longer the rule criteria; now it is: is this a good outcome? That can be subjective. Subjective design is the big argument. That is probably the thing that could lead to arguments occurring after the decision comes out—going to ACAT and having ACAT decide what is good and what is bad.¹⁵⁶

3.91. Red Hill Residents Group identified that outcomes-focussed planning creates a risk around consistent decision making, writing in their submission: ‘The problem with outcome focussed planning is that, by definition, it is anything but specific. Good ideas are subjective and are driven by different agendas. Mixed results abound’.¹⁵⁷

3.92. Sue Tongue also was concerned that given the existing low level of trust in the Territory Planning Authority, confidence in the new system would start extremely low: “...Discretion involves trust and the more a person or organisation is trusted, the more discretion they are given. There is insufficient evidence to justify the high level of trust in the TPA. When misplacement of trust becomes obvious, confidence in a system is undermined”.¹⁵⁸

3.93. The existing low trust in the Planning Authority was echoed in the public hearing by a number of individuals.

3.94. Mr Colin Walters suggested to the Committee that one indication of why public confidence in the Planning Authority appeared to be low was the number of cases where DA approvals had been overturned at the ACT Civil and Administrative Tribunal (ACAT):

I can make a point on that very point, which is that, if you think people do not trust the directorate, maybe look at the stats in the planning department’s annual report of DA approvals that went to ACAT; 46 per cent were varied or overturned. That means that ACTPLA only succeeded in 54 per cent of cases. That is a most terrible record. Most departments would be ashamed to own up to that, I have to say. That is a very good reason why people do not have a lot of confidence on the planning directorate.¹⁵⁹

¹⁵⁵ Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Committee Hansard*, 6 December 2023, p 50.

¹⁵⁶ Ms Natalia Anderson, President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 202, pp 120–121.

¹⁵⁷ Red Hill Residents Group, *Submission 1*, p 1.

¹⁵⁸ Ms Sue Tongue, *Submission 22*, p 3.

¹⁵⁹ Mr Colin Walters, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2023, p 6.

- 3.95. Mr Elford indicated that a lack of consistency and rigour in enforcement of the existing planning system had eroded public trust in the Planning Authority.¹⁶⁰ He felt there was a need to improve trust in the EPSD Directorate and the Planning Authority.¹⁶¹ Mr Peter Elford later stated to the Committee that the public was being expected to simply trust the Planning Authority to make decisions that would deliver better outcomes:

I would like to return to an earlier point I made: we do not know. The directorate has made no attempt to show how the new system might be [sic] deliver what the community expects as better outcomes. There have been no examples. I have mentioned this on numerous occasions. It is a case of: "Trust me. We will train our people and it will be good".¹⁶²

- 3.96. Mr Ronald Brent also felt that moving to a system with more discretion would be challenging in the face of perceived failures of the Planning Authority under the previous system which had less discretion.¹⁶³

- 3.97. Dickson Residents Group held concerns about the nature of decision-making under the planning system, relating this to the public experience of the previous planning system:

Decision making with integrity requires transparency and fairness to deliver the broad foundation of trust that an effective, durable planning system relies on. The reason this planning system review is taking place is because in practice the Directorate responsible, EPSDD, and its statutory body ACTPLA, have failed the wider community.

- 3.98. This was also relayed by other witnesses too, with Mr Elford, Mr Zeil of the North Canberra Community Council and Ms Carrick of Woden Valley Community Council explaining that the apparent lack of confidence in the new planning system stemmed from the perceived failure of planning officials to properly and consistently apply the previous planning system.¹⁶⁴

- 3.99. Indeed, Dr David Denham noted that governance and compliance was an issue perceived under the previous system:

It is really a question of governance and compliance. Before I get into the details of that, I am just going to say one long sentence, if I am allowed, and that is that I think most community associations would think that the main problem with the old planning system is compliance and enforcement—and the rules could be changed, et cetera, et cetera.¹⁶⁵

¹⁶⁰ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 4.

¹⁶¹ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 6.

¹⁶² Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, pp 5–6.

¹⁶³ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, p 24.

¹⁶⁴ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 4.

¹⁶⁵ Dr David Denham AM, President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2023, p 14.

- 3.100. Mr Jochen Zeil of the North Canberra Community Council suggested that instead of implementing a new outcomes-based system, the Government should focus its efforts on improving the compliance of the then-existing rules-based planning system:

The first thing I would suggest is to actually manage compliance with the existing rules. I have no confidence whatsoever in the current system. All I can see is that it is becoming more wishy-washy, compared to what was there before...¹⁶⁶

- 3.101. The shift to an outcomes-based system raised additional concerns for Mr Colin Walters, Chair of the Inner South Community Council. He told the Committee that:

When we talk about outcomes, we are talking about projected outcomes here; there are not real outcomes. You do not see the real outcomes until the thing is built. It is a projected outcome, and it is the opinion of, I would say, a mid-range official in the planning department.¹⁶⁷

- 3.102. Mr Elford noted that the lack of trust in governance structures within the planning system was exacerbated by the perceived lack of metrics within the system. Mr Elford told the Committee that:

One of the key points—the number one point that all of the community councils agreed on in our submission—is that there is absolutely nothing that tracks the performance of the new system. There is nothing that measures its success. In the EPF, the community councils asked the directorate, “What metrics have you got for success?” The response was unclear at best. If I am generous, it was weak. It seemed to reflect that they would do their own internal reviews.¹⁶⁸

- 3.103. Indeed, community trust in the planning system is so low that Mr Walters argued that the perceived discretion allowed under the new system presents a potential risk of corruption:

We are very concerned that this will put a great deal of pressure on the decision-maker. In the past, the decision-maker had to look at the rules and say whether they were complied with or not. Now it is his or her view as to a good outcome. There is going to be a lot of pressure from developers to agree that such and such is a good outcome.¹⁶⁹

- 3.104. In this regard, Mr Walters emphasised the need for a risk management framework to be incorporated into the planning system. He stated that:

What this lacks is a risk management framework. I have asked around; no-one can find anything in this documentation that amounts to a risk assessment or a risk management framework, which is standard international good practice for a big, complex change with a lot of moving parts like this.¹⁷⁰

¹⁶⁶ Mr Jochen Zeil, Chair, North Canberra Community Council, *Committee Hansard*, 6 December 2023, p 3.

¹⁶⁷ Mr Colin Walters, Chair, Inner South Community Council, *Committee Hansard*, 6 December 2023, p 2.

¹⁶⁸ Mr Peter Elford, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 10.

¹⁶⁹ Mr Colin Walters, Chair, Inner South Community Council, *Committee Hansard*, 6 December 2023, p 2.

¹⁷⁰ Mr Colin Walters, Chair, Inner South Community Council, *Committee Hansard*, 6 December 2023, p 2.

- 3.105. Sue Tongue advocated for monitoring given the increased level of discretion in decision making under the new planning system:

Accountability for the exercise of discretion is crucial in achieving an effective system and the legislature should demand it on behalf of its electors. Attention should be paid to reporting on decisions, reviews of decisions, quality assurance and climate impact. Individual patterns of decision making should be tracked. Integrity measures and whistle-blower protections should be implemented. Complaints should be gathered and assessed. Systems should be put in place to closely monitor the new system to see the effects of widespread discretion.¹⁷¹

- 3.106. Sue Tongue in her submission also wrote: ‘decision making must be seen as part of a continuum that includes quality assurance of decisions to assess how well decisions work. Results can be fed back into controls so future decisions can respond’.¹⁷²

- 3.107. Mr Walters proposed that the new system measure deviations from the rules of the previous system:

If I could make a specific suggestion, it is this: turning to Fiona’s point about the slippery slope, it is about developers saying, “Well, they gave us an extra five metres in Belconnen. Can we have it in Woden?” and measuring the deviations from the old rules that are approved on the basis of good outcomes. That would give you a fairly solid basis to find out what is going on.

- 3.108. This was similarly proposed by Mr Brent:

Coming back to a question you asked at the previous session, I do think there is a need to be able to track the performance of the department to be able to monitor responses. I think there are some obvious measures: data on the extent to which there are deviations from the technical guidelines; data on plot ratios, tree preservation, overshadowing, permeable surfaces; data on the enforcement of breaches; data on the variants from old system outcomes. I think there are lots of really easy metrics that can be used, and I would like to see a forum such as this monitoring those metrics to see if the new system is actually working, because I would be pretty confident that the inherent bias towards developers will dramatically reduce the quality of developments.¹⁷³

- 3.109. Ms Marianne Albury-Colless of the Reid Residents Group too supported monitoring:

I concur with that strongly, because I think without being able to assess, monitor, evaluate, implement and change, and have the metrics behind that, you will have a very flawed system ahead of you. Because, basically, you have got a policy here and you have to implement it, and if you do not have a way of checking its working progress and its end results, then I think that it is a free-for-all.¹⁷⁴

¹⁷¹ Ms Sue Tongue, *Submission 22*, p 3.

¹⁷² Ms Sue Tongue, *Submission 22*, p 3.

¹⁷³ Mr Ronald Brent, Member, Dickson Resident’s Group, *Committee Hansard*, 6 December 2023, p 19.

¹⁷⁴ Ms Marianne Albury-Colless, President, Reid Residents’ Association, *Committee Hansard*, 6 December 2023, p 19.

- 3.110. Ryan Hemsley was of the view that it was ultimately up to EPSDD to think about what measures could be put in place to measure performance of the new system:

I think that ultimately rests with EPSDD. Fundamentally they are the ones who designed the system. They are the ones who set the assessment outcomes. They are the ones who claim to be carrying this new project forward with the best of intentions. As community organisations we will bring our own views and prejudices to the table as far as what we would like to see built, but ultimately we are not the ones setting the assessment outcomes. We cannot evaluate what actually gets built against those outcomes. So it has to rest with the directorate that is actually driving this reform.¹⁷⁵

- 3.111. Mr Hemsley suggested to the community that until EPSDD produces a measurable framework in which the system can be evaluated, the community councils will not have confidence that the new planning will achieve what it is supposed to.¹⁷⁶

- 3.112. Lachlan Butler of Belconnen Community Council agreed:

I completely agree. It has been four years of reform. They kind of knew from the start it was going to be an outcomes-based system. Transparency and governance are things we have been raising since the beginning, and governance only kind of got a mention last minute when the Planning Act was being passed. When it comes to evaluating whether or not this is a good job, what should have been done, probably years ago, and as part of the consultation, was to ask: is the community happy with how we are going to measure these outcomes? But, again, I agree with Ryan, eventually it is an EPSDD issue.¹⁷⁷

- 3.113. Belconnen Community Council argued in favour of a framework to assess good outcomes:

The planning reform is based around the idea of achieving good planning outcomes. This planning system has the potential to produce better outcomes, although better outcomes depend on considered and consistent decision-making from EPSDD and cannot be assumed. We suggest establishing an evaluation framework after the new planning system is introduced, to examine whether good outcomes are in fact being achieved.¹⁷⁸

- 3.114. The Conservation Council noted the greater subjectivity that the new Territory Plan's focus on outcomes allows. While it considered the move towards an outcomes-based planning system as positive, it told the Committee that:

...we are concerned that a shift to a more subjective, 'outcomes-based' planning system will make our planning system even less regulated. We recommend better and more resourcing for stronger compliance and enforcement of planning

¹⁷⁵ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 78.

¹⁷⁶ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 79.

¹⁷⁷ Mr Lachlan Butler, Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2023, pp 78–79.

¹⁷⁸ Belconnen Community Council, *Exhibit 41*, p 2.

approvals, and that these resources ensure compliance with approvals throughout the actual development process, not just at the end.¹⁷⁹

- 3.115. Community Councils who gave evidence to the Committee concurred with this perspective on compliance and enforcement.¹⁸⁰ Friends of Grasslands also argued for monitoring of compliance with environmental and biodiversity requirements.¹⁸¹
- 3.116. The Planning Institute of Australia saw a potential role for greater use of panels within the planning system beyond the design review stage. It noted that contentious development applications, particularly those which have received significant community feedback and public submission during consultation, could be sent to a panel for assessment.¹⁸²
- 3.117. According to Mr Fitzpatrick, an assessment panel containing a qualified architect, landscape architect and planners that meets regularly in a public forum to decide such contentious development applications is needed. By incorporating recommendations from assessing officers and hearing from both proponents and objectors would help to provide the community with confidence in the outcomes focus of the new planning system.¹⁸³ According to Ms Natalia Anderson, such a process could also bolster scrutiny of planning decisions and outcomes by allowing ‘for people to follow the process and understand why the thoughts came out as the’ did’.¹⁸⁴
- 3.118. However, the Planning Institute of Australia caveated this suggestion, stating that it should not impose ‘a burden on top of the assessment timeframe’ as ‘assessment timeframes are long enough already’.
- 3.119. Mr Fitzpatrick argued that the certainty provided by the use of such a panel would also benefit industry:

The panel has an opportunity to provide to industry a definite time frame. You can inquire and ask, “How is my DA going?” and somebody can say, “It’s earmarked for a panel in a fortnight.” To me, that, from an applicant’s point of view, says, “Great. I know that in a fortnight, either good or bad, something will happen,” whereas at the moment it is open-ended—“It is near the end of the assessment and we are looking to finalise it”—but you do not know whether that is one week or six weeks away.¹⁸⁵

- 3.120. On a related note, EPSDD also receives strategic comment on planning and development policy via the Environment and Planning Forum (the Forum). Its membership includes the EPSDD Director-General, and representatives from a range of ACT organisations including

¹⁷⁹ Conservation Council ACT Region, *Submission 21*, p 5.

¹⁸⁰ See for example: Mr Peter Elford, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 3; Mr Jochen Zeil, Chair, North Canberra Community Council, *Committee Hansard*, 6 December 2023, p 3.

¹⁸¹ Friends of Grasslands, *Submission 24*, p 2.

¹⁸² Mr Trevor Fitzpatrick, immediate past President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 122.

¹⁸³ Mr Trevor Fitzpatrick, immediate past President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 122.

¹⁸⁴ Ms Natalia Anderson, President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 123.

¹⁸⁵ Mr Trevor Fitzpatrick, immediate past President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 123.

professional planning and architecture bodies, community councils, environmental bodies, industry bodies, and a range of other interest groups and peak bodies.¹⁸⁶

- 3.121. At the public hearings, Mr Ponton noted that EPSDD is working with the Forum in developing an evaluation framework focussed on the outcomes of the planning system. Mr Ben Green, Executive Group Manager at EPSDD, told the Committee that the Forum is part of the community and industry engagement that will contribute to qualitative and quantitative analysis of the strategic planning elements that will be part of the evaluation process as the new planning system becomes operational.

Committee comment

- 3.122. Uncertainty within the community about the administration of the new Territory Plan is a consistent theme that runs through many parts of this report. The number of documents, the overall size of the Territory Plan, the complexity of the various assessment outcomes and requirements, and the perceived lack of hard rules and metrics for measuring are among the matters raised most frequently during this inquiry.
- 3.123. The Committee sees a clear need to take steps to address this uncertainty in how the Territory Plan will be administered, especially in the short term as the Plan commences its operation. Despite the volume of training material available, information sessions and other forms of community and industry outreach that is made available by EPSDD, it is clear that considerable uncertainty remains.
- 3.124. One means of addressing this uncertainty is through providing an avenue for industry and the community to ask questions as they arise. In this regard, the Committee notes the existence of the dedicated hotline for questions about the planning system. In the Committee's view, the hotline should continue to be available as public understanding of the new planning system continues to coalesce.
- 3.125. Another avenue is through implementation of a suitable monitoring and compliance to ensure public confidence in planning decisions and outcomes under the new system.

Recommendation 4

The Committee recommends that the ACT Government continue the new planning system hotline for at least 12 months to assist community and the industry to access assistance and information about the planning system.

¹⁸⁶ ACT Government Environment, Planning and Sustainable Development Directorate, [Environment and Planning Forum](#) (accessed 29 February 2024).

Recommendation 5

The Committee recommends that the Environment, Planning and Sustainable Development Directorate set accountability indicators and report in the Directorate's Annual Reports against whether the new planning system is delivering better outcomes, including:

- how many DAs are approved;
- how many deviate from technical specifications;
- how long DA approval takes;
- how many inspections were conducted after construction;
- how many inspections found breaches;
- what enforcement action was taken; and
- which issues caused the highest amount of complaints, appeals and non-compliance.

- 3.126. The Environment and Planning Forum is also a valuable tool in terms of addressing the levels of uncertainty about the operation of the new system that were raised with the Committee, particularly in relation to the outcomes of the system. In the Committee's view, addressing the community concern effectively will require a high level of transparency from EPSDD, particularly as the outcomes under the planning system start to be built and become more noticeable to the community.
- 3.127. Giving the public an insight into key aspects that feed into strategic evaluations of the planning system will form an important part of this process.

Recommendation 6

The Committee recommends that the Environment, Planning and Sustainable Development Directorate include in its Annual Report the number of Environment and Planning Forum meetings held, and what feedback and outcomes arose from those meetings.

National Capital Design Review Panel

- 3.128. Part 6.2 of the Planning Act establishes the National Capital Design Review Panel (NCDRP) to 'provide design advice to proponents of development proposals', and is composed of both ACT and federal government representatives.¹⁸⁷
- 3.129. Its membership includes the ACT Government Architect, a representative of the National Capital Authority, and at least one other member with 'appropriate expertise in

¹⁸⁷ *Planning Act 2023*, ss 96, 97.

architecture, urban design, urban planning, landscape architecture, engineering' or another relevant area.¹⁸⁸

- 3.130. Certain proposed developments are required to consult the NCDRP prior to submitting a development application.¹⁸⁹ The *Planning (General) Regulation 2023* prescribes the following developments as requiring NCDRP consultation:
- buildings with 5 or more storeys;
 - increases in floor space of over 2000 square metres for shops located fully or partly in the following zones:
 - residential zones;
 - commercial zones;
 - community facility zones; or
 - a parks and recreation zone.¹⁹⁰
- 3.131. Additionally, in cases where the Minister is satisfied that a proposed development is likely to be of significant economic, social or environmental significance to the ACT, proponents can be required to undertake NCDRP consultation. More generally, the proponent of any development is able to consult the NCDRP if they choose.¹⁹¹
- 3.132. According to its website, the NCDRP's role is to provide 'design advice to decision makers, developers and their design teams 'under the supervision of the ACT Government Architect and the NCA's Chief Planner'.¹⁹² At present, specific panels are selected from a 'pool of experts identified for their skills, expertise and record of achievement in one or more fields relevant to planning, design and development'. Further, in cases where additional expertise in fields including heritage, transport, education or environment is required, additional panel members can be called in.¹⁹³
- 3.133. The Planning Institute of Australia was supportive of the current role of the NCDRP, noting that it forms an important part of the assessment process for proposed developments. While the Planning Institute of Australia was supportive of the NCDRP continuing to perform its current pre-development application role rather than take on a decision-making role, as briefly noted above Mr Trevor Fitzpatrick, immediate past President of the Planning Institute of Australia ACT Branch, was supportive of a wider role for panels in the ACT planning system:

We feel there is plenty of opportunity for the Planning Authority or the skills and expertise in a diversity of disciplines within EPSDD to form a decision-making panel themselves so that a DA goes through the Design Review Panel process and

¹⁸⁸ *Planning Act 2023*, s 97.

¹⁸⁹ *Planning Act 2023*, s 100.

¹⁹⁰ *Planning (General) Regulation 2023*, s 11.

¹⁹¹ *Planning Act 2023*, s 100.

¹⁹² ACT Government Environment, Planning and Sustainable Development Directorate, [National Capital Design Review Panel](#) (accessed 22 February 2024).

¹⁹³ ACT Government Environment, Planning and Sustainable Development Directorate, [National Capital Design Review Panel](#) (accessed 22 February 2024)

the consultation process and then through to the end point where the assessing officer looks at all the issues and provides a report. That report is then able to be scrutinised by the applicant and the objectors to say, “How are all these issues put together to come to a conclusion?” A report and a recommendation would go to another body within EPSDD.¹⁹⁴

- 3.134. Mr Michael Hopkins, CEO of Master Builders Association of the ACT, emphasised the importance of pre-development application advice and guidance for proponents. He noted that it is important, when adopting an outcomes-based planning approach, that assistance is provided to:

...help applicants make the right judgements, to support them in taking risks and making innovative decisions before they commit the hundreds of thousands of dollars to document a development application.¹⁹⁵

- 3.135. According to Mr Hopkins, timeliness was a matter of concern in relation to the NCDRP. Specifically, he noted that ‘it is currently taking more than six months just to get an appointment’ and that ‘this is starting to bring down the whole system’. In some cases, Mr Hopkins told the Committee that it takes eight months to meet the NCDRP.¹⁹⁶

- 3.136. Mr Hopkins emphasised that the NCDRP is a ‘very significant and important part of an outcomes-based system, but if it takes six months to ask their advice then it is clearly not going to work’.¹⁹⁷ Mr Hopkins argued that, to make the planning system work effectively, it should be possible to schedule NCDRP consultations within two weeks.¹⁹⁸

- 3.137. Ms Cia Flannery, President of the Australian Institute of Landscape Architects ACT Chapter, told the Committee that in her experience with the NCDRP ‘there is not much time allocated to reviewing the documentation’:

You are more or less limited to half a day, which involves the proponent presenting to you and then discussions. The projects to which the Design Review Panel are responding are normally quite large sites, and it would be good to visit the site and actually approach it from all angles, see what the connections are and see what the physical constraints are that appear on the site before you even go through the documentation, in order to give a really balanced review of the process.¹⁹⁹

- 3.138. The composition of the NCDRP was also raised with the Committee. Ms Flannery told that Committee that:

¹⁹⁴ Mr Trevor Fitzpatrick, immediate past president, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, pp 121–122

¹⁹⁵ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 132.

¹⁹⁶ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 132.

¹⁹⁷ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 132.

¹⁹⁸ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 133.

¹⁹⁹ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 37.

In other jurisdictions where you have design review panels, there is an expression of interest process that goes into formalising the engagement of particular expertise that will form the design review panel. That never really occurred with our Design Review Panel. So it is not like they have invited people to be part of it; it is almost just by chance that you get called up, as far as I can see. I do not think that is really great.²⁰⁰

3.139. Ms Catherine Townsend, the ACT Government Architect, also discussed the composition of the NCDRP, noting that it contains approximately 40 names from around Australia. Panellists are then selected on the basis of their expertise in relation to each proposed development.²⁰¹

3.140. Ms Townsend is responsible for selecting panellists for specific proposals, and outlined her methodology to the Committee:

I select panellists based on their professional expertise with that typology; their lack of conflict of interest; their familiarity with Canberra; and their suitability for that panel. When I am putting panels together, I make sure the panel accurately represents the primary issues on that panel, so there are heritage experts; there are education experts; healthcare; planners; landscape architects; architects; and engineers. There is a full gamut of expertise and as I mentioned the panel is selected based on the characteristics of the project.²⁰²

3.141. EPSDD further noted that, while the NCDRP was currently serviced by an interim panel, the Directorate is in the process of finalising an open tender process for expressions of interest 'for the establishment of a permanent pool of panel membership which will be put to market in early 2024 to support the implementation of the new planning system'.²⁰³

3.142. It further stated that the current interim panel had been selected by the NCDRP co-chairs – the ACT Government Architect and the National Capital Authority Chief Planner - without consulting representative bodies. Selection processes consider the skills, qualifications, registrations, communication skills, and ability to provide 'objective and constructive feedback on complex design issues' of possible panellists.²⁰⁴

3.143. The idea of embedding the NCDRP advice into the development application was proposed by the Master Builders Association of the ACT. According to Mr Hopkins:

If the design review panel supports an innovative idea, or maybe they make a suggestion to a developer to make a change to an innovative idea, it would help if the developer could rely on that advice through the system. At the moment they can receive that advice from the design review panel but, essentially, they still

²⁰⁰ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 37.

²⁰¹ Ms Catherine Townsend, ACT Government Architect, *Committee Hansard*, 7 December 2023, p 176.

²⁰² Ms Catherine Townsend, ACT Government Architect, *Committee Hansard*, 7 December 2023, p 177.

²⁰³ Mr Chris Steel MLA, Minister for Planning, *answer to Question on Notice 2: Government Landscape Architects*, 13 December 2023 (received 19 December 2023, p 2).

²⁰⁴ Mr Chris Steel MLA, Minister for Planning, *answer to Question on Notice 2: Government Landscape Architects*, 13 December 2023 (received 19 December 2023, p 2).

lodge their application and have to go through the same process as if they had not accessed that advice in the first place.²⁰⁵

- 3.144. Similarly, the Australian Institute and Landscape Architects (ALIA) argued that the NCDRP should 'carry more weight in the approval process' and 'consist of all professions (planner, engineer, architect, landscape architect, cultural consultant) as a base to their structure'. According to ALIA:

This will allow for a less ambiguous and more constructive technical review of projects that are 'out of the box' and realistically place our city and living options into a category of innovation and opportunity.²⁰⁶

- 3.145. EPSDD emphasised the role of the NCDRP in bringing design rigour into the planning system, noting that it considers the various Design Guides in its advice on proposed developments. Further, the ACT Planning Authority are required to 'give consideration to not only the design guides but the response and also the advice for the projects that are considered by the Design Review Panel'.²⁰⁷

- 3.146. Regarding the time taken to access the NCDRP, Mr Ben Ponton, Director-General of EPSDD, told the Committee that EPSDD is responsible for funding and resources for the NCDRP. He stated that:

If you refer to the budget papers, there were additional resources provided by government in the budget for 2023-24 to support the secretariat and the work of the Design Review Panel. That was in response to what we had been hearing from industry about the time it was taking to get in.²⁰⁸

- 3.147. However, in terms of how this would function under the new planning system, Mr Ponton stated that EPSDD 'will see how that goes'. He elaborated:

We may need to ask government for additional resources, but, having said that, we are looking internally at how we conduct the work of the secretariat. Can we be more efficient in that, in terms of how we craft the reports for the Government Architect to consider?²⁰⁹

- 3.148. Additionally, Mr Ponton argued that proponents have a role to play in ensuring the workings of the NCDRP are as effective as possible:

Sometimes industry do not help themselves in terms of what they bring to the Design Review Panel, and it is not particularly well resolved, which means they need to come back multiple times or they pull out at the last minute and we have

²⁰⁵ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 133.

²⁰⁶ Australian Institute of Landscape Architects ACT, *Exhibit 29*, p 2.

²⁰⁷ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 169.

²⁰⁸ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 171.

²⁰⁹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 171.

a slot. It is really hard for somebody to come with a day's notice, so we actually have slots that are not being utilised.²¹⁰

Committee comment

- 3.149. The Committee notes that the current composition of the NCDRP is intended as interim only and is meant to fill the gap until a longer-term, merit-based selection process has been undertaken.
- 3.150. In this regard, the Committee was pleased to find that an open tender process is currently under way to appoint a new NCDRP. The appointment of a panel based on merit selection should help to boost public confidence in the design advice provided, and the ability of the panellists to provide informed advice on the various design guides under the Territory Plan and their application to proposed developments. This in turn will assist proponents in both achieving public support for developments, and in achieving positive design outcomes.
- 3.151. While current regulations prescribe specific large developments as requiring NCDRP input, there are nonetheless potentially a number of contentious, complex or otherwise significant development proposals that would not be captured by the criteria set out in regulation. The Committee sees value in a wider consideration of what means exist to capture these types of proposals in a systematic way rather than relying on ministerial discretion. Noting that provisions exist that allow the Minister to require NCDRP consultation in certain circumstances, industry would benefit from certainty around the criteria for mandatory NCDRP consideration. As such, in the Committee's view providing this certainty via amended regulation should be considered.
- 3.152. Future consideration of a panel of independent experts may be required to address the level of community concern that such contentious proposed developments engender, perhaps with different operating procedures allowing a reasonable level of public input. In the Committee's view, this is a matter that should be considered further in future.
- 3.153. The Committee was also concerned to hear feedback from both proponents and panellists on the NCDRP regarding the operations of panel, in particular the time it can take to meet with a panel and the time devoted by panels to consideration of proposed developments.
- 3.154. While the response from EPSDD regarding additional resources, internal considerations about operating processes for the NCDRP secretariat, and the role of industry in ensuring NCDRP's time is used efficiently are all relevant, a six-month waiting period before meeting with a panel is clearly too long, and requires addressing.
- 3.155. In this regard, and particularly as the new planning system commences and both government officials and proponents learn its intricacies, the Committee sees a need to ensure that the NCDRP is appropriately staffed and supported, both for its panellists and secretariat.

²¹⁰ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 171.

Recommendation 7

The Committee recommends that the ACT Government provide additional resources to the National Capital Design Review Panel and appropriate levels of support staff such that bookings for prescribed developments receive an effective and efficient response.

Capability

- 3.156. A number of matters raised with the Committee during this inquiry spoke to the capability within the ACT Government, and the staff capability profile that is seen as necessary to effectively implement the Territory Plan for the benefit of all residents of the ACT. This section outlines this evidence and the Committee's response, with a focus on social equity and landscape architecture.

Social equity

- 3.157. The ACT Council of Social Service (ACTCOSS) argued that both the design and implementation of the Territory Plan can play an important role in 'achieving our vision of Canberra as a just, safe and sustainable community in which everyone has the opportunity for self-determination and a fair share of resources and services'.²¹¹
- 3.158. ACTCOSS emphasised the potential for poor urban planning to deepen inequalities, and argued for planning outcomes that improve social inclusion. In light of 'ongoing cost-of-living pressures, growing housing insecurity and inequities, and persistent and growing inequalities in wealth', ACTCOSS believed it is important to 'foreground equity considerations' in ACT's planning processes.²¹²
- 3.159. Dr Devin Bowles, CEO of ACTCOSS, told the Committee that historically, planning 'was done as a social policy tool'. While the intent of early planning was often to enable the middle-class and wealthy to 'keep people that they saw as less desirable living somewhere else', this nonetheless 'demonstrates the power of planning as a social policy tool'. Indeed, Dr Bowles stated that planning 'is in fact one of the most potent social policy tools that the government has at its disposal'.²¹³
- 3.160. According to Dr Bowles, there is a need for sufficient flexibility within the Territory Plan to enable government to 'influence decisions in ways that favour planning for social good' and support a healthy population. In this regard Ms Corrine Dobson, Head of Policy at ACTCOSS, noted that while the Planning Act and Territory Plan have aspects 'that relate to social factors and issues around affordability' as well as 'worthwhile requirements around how consultation is undertaken', there is a need to embed 'those considerations around

²¹¹ ACTCOSS, *Exhibit 23*, p 1.

²¹² ACTCOSS, *Exhibit 23*, p 1.

²¹³ Dr Devin Bowles, CEO, ACTCOSS, *Committee Hansard*, 7 December 2023, p 153.

what the social implications’ of developments might be, and understanding ‘how inequalities are distributed across the city’.²¹⁴

3.161. Mr Dobson saw a need for:

Having a social planning unit that has oversight and expertise in those areas is imperative, so that we do not see those social considerations getting trumped by all of the different considerations that need to be weighed up when planning decisions are made.²¹⁵

3.162. Dr Bowles further stated that:

To be honest, it is very complex, and we cannot expect a public service to be able to have that expertise without a dedicated unit where people have been recruited particularly for that expertise and where their job is to ensure that that expertise affects decision-making.²¹⁶

3.163. The need for a social policy unit was particularly relevant to the consultation requirements, according the Ms Dobson, in light of the challenging nature of undertaking ‘consultation in a way that engaged with more marginalised or disadvantaged communities’.²¹⁷ Dr Bowles echoed this idea:

What the government has set out, in terms of requiring engagement, is good, but without having people with the mandated expertise to be able to properly facilitate that and interpret results which probably are going to be a bit garbled, the full benefit of that intent will be far short of being realised.²¹⁸

Committee comment

3.164. In the Committee’s view, the social role that can be played by planning is important. Ensuring that people’s wellbeing needs are partly met through the built environment is complex and requires specific expertise to ensure that both the consideration of decision-makers and public consultation are effective in supporting positive social outcomes. Furthermore, good social outcomes from planning do not just benefit marginalised and disadvantaged communities – the whole community benefits from good planning practice that takes account of better social outcomes.

Landscape architecture

3.165. In terms of staffing and capability within EPSDD, Ms Flannery raised the lack of landscape architecture expertise within EPSDD. Ms Flannery told the Committee of her ‘grave

²¹⁴ Ms Corrine Dobson, Head of Policy, ACTCOSS, *Committee Hansard*, 7 December 2023, p 154.

²¹⁵ Ms Corrine Dobson, Head of Policy, ACTCOSS, *Committee Hansard*, 7 December 2023, p 154.

²¹⁶ Dr Devin Bowles, CEO, ACTCOSS, *Committee Hansard*, 7 December 2023, p 153.

²¹⁷ Ms Corrine Dobson, CEO, ACTCOSS, *Committee Hansard*, 7 December 2023, p 154.

²¹⁸ Dr Devin Bowles, Head of Policy, ACTCOSS, *Committee Hansard*, 7 December 2023, p 154.

concern' that 'there was only one registered landscape architect that was employed in the EPSDD'. Further, Ms Flannery noted that this person had since left the Directorate.²¹⁹

3.166. Ms Flannery outlined the reasons for her concern on this issue:

This is of grave concern because of the subjectivity of design. If my peers are presenting plans in the development approval process, who is assessing those and how qualified are they to make those calls?²²⁰

3.167. The time pressures that are often associated with development processes compound Ms Flannery's concerns about the lack of landscape architecture expertise within EPSDD. Given the need to keep 'on track in terms of timing and the costs involved in that', proponents may need to 'go towards what they approve rather than what you see as of higher design regard', given the latter takes more time.²²¹ In light of the lack of exemplar projects on which to base such judgements, Ms Flannery noted that basing landscape decisions on what is approved becomes very difficult.²²²

3.168. As a result, Ms Flannery argued for greater landscape architect expertise within the ACT's planning system. In this regard, she raised the example of New South Wales:

In Sydney, for example, New South Wales, the Government Architect's Office has a senior landscape architect—like a principal landscape architect. So, whenever they are undertaking the greening of anything to do with Sydney City, that comes under their umbrella.²²³

3.169. EPSDD commented on the role of landscape architects within the planning system. Specifically, Ms Townsend noted that for the NCDRP, approximately 80 per cent of design review panels included landscape architects.²²⁴ Mr Ponton added that EPSDD employs a number of landscape architects, as well as 'a separate landscape advisory panel specifically with those experts who provide landscape advice'.²²⁵ However, EPSDD was unable to provide the Committee with the number of qualified landscape architects working in the Directorate, as it 'does not maintain a central register of employees' qualifications that can be correlated with their full-time equivalent status'.²²⁶

3.170. Regarding the proposal to appoint a government landscape architect, Mr Ponton emphasised that he sees the role of landscape architects as an input into the design

²¹⁹ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 38.

²²⁰ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 38.

²²¹ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 38.

²²² Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 38.

²²³ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 38.

²²⁴ Ms Catherine Townsend, ACT Government Architect, *Committee Hansard*, 7 December 2023, p 176.

²²⁵ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 177.

²²⁶ Mr Chris Steel MLA, Minister for Planning, *answer to Question Taken on Notice 2: Landscape Architects*, 7 December 2023 (received 14 December 2023), p 2.

process. He further stated that, by having landscape architect input at the design review state, the system is working well:

From my perspective, I think having a highly qualified government architect chairing the [Design Review] Panel, who brings in that various expertise as needed, serves us well. As I said, we have made sure we have a range of different skill sets.²²⁷

- 3.171. As to whether EPSDD would seek to appoint a government landscape architect, Mr Ponton noted that was a decision for government.

Committee comment

- 3.172. The Committee notes the EPSDD response to the prevalence of landscape architects within the Directorate, but nonetheless shares the concerns expressed in evidence about the perceived lack of this expertise in some areas of the planning system. Noting that the ACT currently employs a government architect and government engineer, the Committee sees a need to expand the expertise available to officials and ministers particularly in the area of design.
- 3.173. Canberra, from its original design, is a city nestled within a landscape, and carries a legacy of environment within its built forms. The expertise, and indeed advocacy, at the highest levels of an expert trained specifically in landscape design will help improve built outcomes for the ACT. Further, it will help to provide the type of advice, guidance and advocacy that builds on the features that make Canberra unique among Australian cities, and help to cement its status as the bush capital.
- 3.174. The appointment of a government landscape architect will assist in filling this perceived gap, and providing the guidance and advocacy outlined above.

Recommendation 8

The Committee recommends that the ACT Government appoint a government landscape architect.

Consultation on development applications

- 3.175. Under the Planning Act, Section 175 requires the Territory Planning Authority to publicly notify development applications for a period prescribed by regulation to allow for public responses to the application.²²⁸ In cases where development applications are changed by the proponent or are prescribed as significant developments, an additional period of public notification can be required.²²⁹
- 3.176. Proponents are required to respond to any representations or entity advice by providing advice to the planning authority about how the representations and advice have been

²²⁷ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 177.

²²⁸ *Planning Act 2023*, ss 175, 180.

²²⁹ *Planning Act 2023*, ss 178, 179.

addressed and any changes to the development application they have resulted in. In cases where the planning authority is not satisfied with the response, more information from the proponent can be requested.²³⁰

3.177. The Property Council raised the change in process with the Committee, noting that ‘under the previous system the proponent would be required to do community consultation’ and provide the result to the assessing authority.²³¹

3.178. The Property Council described its understanding of the new approach outlined above:

Now the process will be that EPSDD conduct consultation with the community, provide a report to the developer who will then need to provide a design change in line with consultation and will then have EPSDD provide that back to the community.²³²

3.179. According to the Property Council, this creates ‘extra steps in the process’, and ‘has the potential for messaging and design to be ineffectually communicated to the community’. The Property Council argued for a return to the previous system of proponent community consultation prior to the lodgement of development applications.²³³

3.180. Richard Nash of Purdon Planning similarly highlighted the removal of DA consultation as making it ‘unclear how involved the proponent will be in the public notification process’.²³⁴

3.181. Tony Trobe indicated to the community that given the perceived uncertainty of the new system, one way to inject more certainty and guidance was to re-introduce pre-DA consultation, saying it would ‘certainly help’.²³⁵

3.182. Without such certainty, he argued, a DA applicant would be taking a gamble on the approval of their application:

The way it is set up now means that it is going to be a huge impost on the Planning Authority. I already have four projects I need to talk to them about, because I do not know whether I can have a wall that is 2.1 metres tall on the boundary, or whatever it is, that does not meet the numeric codes. But it is a performance based document. I cannot make a decision on it; the certifier cannot make a decision on it. All these things are going to go to ACTPLA for decisions, but they said that they do not want to have pre-application meetings, so where does that leave us? Nowhere. We have to take a gamble that it will be approved.²³⁶

3.183. The Dickson Residents Group, Ainslie Residents Association and Reid Residents Association joint submission also touched on the removal of pre-DA consultation:

²³⁰ *Planning Act 2023*, s 179.

²³¹ Property Council of Australia, *Submission 20*, p 4.

²³² Property Council of Australia, *Submission 20*, p 4.

²³³ Property Council of Australia, *Submission 20*, p 4.

²³⁴ Mr Richard Nash, Managing Planning Director and Head of Planning Practice, Purdon Planning, *Exhibit 31*, p 2.

²³⁵ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 34.

²³⁶ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 31.

The need for pre-DA community consultation where developers were required to explain to the community what the likely impact of a development has been removed with consultation to occur once the development has been largely examined and agreed by ACTPLA.

Throughout the Committee hearings Governance and Compliance have been top issues for community groups and yet the communities are not being invited to consult with the current 'Independent Review of the ACT Planning System Governance' being carried out for the ACT government. Effective pre-DA consultation with the community often presents solutions to the negative impacts of a development.

As citizens, residents and communities who are impacted by the effects of inadequate governance and lack of enforcement it is essential for their respective voices to be heard.²³⁷

- 3.184. They advocated for pre-DA consultation mechanisms to be strengthened.²³⁸

Committee comment

- 3.185. The Committee noted that this shift in the timing of community consultation, and the initiation of public notification now landing on EPSDD, results in a material change in the process of making development applications that could have an effect on both the quality of communication in relation to design and indeed other aspects of proposed developments.
- 3.186. In the Committee's view, this creates a two-pass consultation process under which the proponents of major developments will undertake consultation during the pre-application phase, which is possibly duplicated after the application is lodged. In conducting a two-pass consultation process, it is necessary to balance the benefits gained from pre- and post-application consultation with the likely additional time that an extra step will add. As such, there is a need to revisit this shift in process once the planning system has been operating for a period, with a view to examining whether this change has been effective in achieving better design outcomes or higher levels of community input into proposed developments.

Recommendation 9

The Committee recommends that 18 months after the commencement of the Territory Plan, the two-pass consultation process for development applications be reviewed to establish whether further consultation reform is necessary.

Community engagement and oversight

- 3.187. A number of submissions also expressed worry to the Committee regarding the apparent lack of opportunities for community engagement with, and Assembly oversight of, changes

²³⁷ Dickson Residents Group, Ainslie Residents Association & Reid Residents Association, *Submission 32*, p 1.

²³⁸ Dickson Residents Group, Ainslie Residents Association & Reid Residents Association, *Submission 32*, p 1.

to design guides and technical specifications and district strategies under the new planning system, with all three being able to be amended by the Planning and Land Authority via notifiable instrument.

3.188. The Griffith Narrabundah Community Association (GNCA) wrote:

Essentially, all the planning power will now be vested in ACTPLA and will be controlled by Notifiable Instruments, which can be changed without consideration by the Assembly. The approval process to assess DAs appears to be undertaken in secret and will be difficult to challenge if required.²³⁹

3.189. The GNCA felt it was part of a broader goal by the Government to increase the scope and authority of the Territory Planning Authority:

As the policy goal for the new system appears to be to give the unelected members of The Planning Authority (TPA) virtually unbridled control of territory planning to achieve unchecked development, the goal has been accomplished. Assertions that the changes simplify the planning system are not true.²⁴⁰

3.190. They added later:

The Plan and the main supporting documents - the district strategies, design guides and technical specifications – are all notifiable instruments (NIs). That is, they are delegated or secondary legislation. Delegation is useful for those who govern, especially bureaucrats, but must be balanced against the just expectations of constituents including their rights to clean air, property and staying alive!²⁴¹

3.191. The Inner South Canberra Community Council observed that the role under the new Planning System for the Legislative Assembly had been reduced:

Before the introduction of the new Planning Act the Assembly had full power to amend the Planning and Development Act at any time if it were of the view that too many worthy DA applications were being unreasonably rejected by ACTPLA or by ACAT. Now however, with planning rules entirely in the hands of the Chief Planner, they have no such option, and will just have to endure the public abuse, without any way of remediating the situation.²⁴²

3.192. Stephanie Booker also held concerns around oversight and scrutiny of the design guides and technical specifications given they can be amended by the Planning Authority without public consultation and scrutiny:

As noted above, the practical implications of design guides and technical specifications sitting outside the territory plan as ‘supporting documents’ that are ‘called up’ is that there is very little oversight or scrutiny if any of these

²³⁹ Griffith Narrabundah Community Association, *Exhibit 33*, p 1.

²⁴⁰ Griffith Narrabundah Community Association, *Exhibit 4*, p 1.

²⁴¹ Griffith Narrabundah Community Association, *Exhibit 4*, p 2.

²⁴² Inner South Canberra Community Council, *Exhibit 34*, p 2.

documents were to be amended. There is no mechanism for consultation to changes to any of these supporting documents, even though they contain the qualitative and quantitative measures of our planning system. These documents will shape Canberra in decades to come in critical ways – including (hopefully) ensuring Canberra becomes more climate resilient – and yet should any of these documents be amended, there will be no oversight by those that govern the Territory (the Legislative Assembly), with no inputs from those that experience the consequences (the community).²⁴³

- 3.193. Ms Booker advocated for the design guides and technical specifications to be included in the Territory Plan, or for there to be some mechanism for consultation and scrutiny, so that if these documents are amended, they can be subject to transparency, accountability and scrutiny, writing that they ‘are too critical to the development of future Canberra to be untouchable’.²⁴⁴

- 3.194. The Conservation Council held similar concerns:

The practical implications of design guides and technical specifications remaining ‘supporting documents’ rather than better integrated as part of the Territory Plan, is that if either the design guides or the technical specifications were to change, there is now very little oversight of these changes, and certainly no public inputs or scrutiny. Major and minor plan amendments refers to what is currently in the Territory Plan and not it’s supporting documents, even though these supporting documents form the backbone of development assessment. As stated above, technical specifications and design guides are akin to rules and criteria in our former planning system. As set out, both design guides and technical specifications are ‘critical’ to the development assessment process. And yet they can be amended without scrutiny, with potential impacts on the environment. Critically important policy with respect to planning, such as living infrastructure provisions (V369) are now primarily located in ‘supporting documents’ that the community, and the Legislative Assembly, cannot interrogate if weakened. This is a critical issue.²⁴⁵

- 3.195. Mr Tim Field also expressed concern with the flexibility of the Technical Specifications, which while not mandatory, can be changed by the Territory Planning Authority as they see fit, and have been indicated by the EPSDD as requirements likely to lead to a development being approved if complied with:

It has been said that, if you put in a DA and you comply with the technical specifications, you will be given the tick. It makes sense to have a set of rules: “Just tell me what to do and I will do it.” But they are enacted documents—they have to be tabled—but they are not disallowable instruments and they can change them as they see fit. In theory, as we go along with this, if people feel they are too onerous they could reduce them. That is just one aspect. More broadly,

²⁴³ Ms Stephanie Booker, *Submission 25*, p 2.

²⁴⁴ Ms Stephanie Booker, *Submission 25*, p 2.

²⁴⁵ Conservation Council ACT Region, *Submission 21*, p 3.

the technical specifications, as I said, are not in the plan and do not have to be considered in considering a DA under the act.²⁴⁶

- 3.196. However, in airing this concern, Mr Field did support the notion of the Territory Planning Authority having some authority to adjust rules to lead to better outcomes:

The notion of allowing ACTPLA to have some jurisdiction over rules has always been a bugbear. I have had meetings with Ben Ponton over 15 years. He was a client of mine. We used to meet to discuss the stuff that happened on the ground level in the industry, and it was very useful because there are a lot of things like basement rules, attic rules—you know all about that—and the rules about solar fencing and stuff that could be tweaked to make them better, but they have to go through a huge process to change it. Innately, they are very conservative, so they are not going to go rogue on this. You should allow them to have some jurisdiction in fiddling with the rules as they go along. You will get better outcomes that way. There may be the odd mistake, but I think that it will be a good incentive, generally.²⁴⁷

- 3.197. In response to a Question on Notice around whether the Consultation Guidelines apply to the preparation of Design Guides and Technical Specifications in the future, Minister for Planning, Mr Chris Steel MLA, informed the Committee that while the *Planning Act 2023* requires that any consultation done in accordance with the Act must consider the Good Consultation Guidelines, the Act itself does not specify that consultation must be undertaken for the preparation of the design guides, and so the guidelines will not apply. The Minister also stated that it is not the government's intention at this stage to amend the Planning Act to require consultation on the Design Guides and Technical Specifications, but that does not exclude future consideration.²⁴⁸

- 3.198. The Committee observes that the absence of consultation requirements for the design guides and technical specifications is stark given in the *Planning Act 2023*, there are a range of areas where the Act requires or may require consultation, such as:

- the making of the draft Territory Plan (section 606(2));
- the making of the planning strategy (section 36(3));
- the making of district strategies (section 38(3));
- Major Amendments to the Territory Plan (Part 5.2);
- Minor Amendments to the Territory Plan (Part 5.3);
- Environmental Impact Statements (section 114);
- Draft Revised offsets policy (section 229);
- Draft offsets policy guidelines (section 236);

²⁴⁶ Mr Tim Field, *Committee Hansard*, 6 December 2023, p 32.

²⁴⁷ Mr Tim field, *Committee Hansard*, 6 December 2023, p 33.

²⁴⁸ Mr Chris Steel MLA, Minister for Planning, *answer to Question on Notice 5: Good Consultation*, 13 December 2023 (received 20 December 2023), p 2.

- Draft land management plans (section 390);

Committee comment

- 3.199. The Committee is of the view that given their critical importance in the planning system, the Design Guides and Technical Specifications should be subject to some form of community engagement process.

Recommendation 10

The Committee recommends that the ACT Government consider how amendments to the Design Guides and Technical Specifications could be subject to a community engagement process.

- 3.200. The Committee also considers that significant amendments to the Design Guides and Technical Specifications should be subject to a process of oversight by the relevant Assembly Committee, in a manner similar to that outlined in section 228 of the *Legislation Act 2001* for statutory appointments.

Recommendation 11

The Committee recommends that the ACT Government consider amending the *Planning Act 2023* so that major amendments to the Design Guides and Technical Specifications are subject to review and comment by the relevant Assembly Committee.

Planning Matters

RZ1 dual-occupancy changes and the missing middle

- 3.201. A key policy goal of the new planning system is changes to provide for greater housing options and improved housing density.²⁴⁹ One major policy announced with the Territory Plan is subdivision policy for RZ1 unit titling, which permits a dual occupancy on a RZ1 block to be unit titled, provided it is located on a block that is at least 800m² and one dwelling is no more than 120m² (excluding the area of the garage).²⁵⁰

Concerns with the RZ1 policy

- 3.202. Several submissions and witnesses felt that the policy, however well intentioned, does not go far enough and will fall short in achieving its intended policy goal.²⁵¹
- 3.203. For instance, the Australian Institute of Architects wrote:

²⁴⁹ ACT Government, [ACT Territory Plan Explanatory Report](#), p 21.

²⁵⁰ ACT Government, [ACT Territory Plan Explanatory Report](#), p 27.

²⁵¹ See, for example: Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p 3; Property Council of Australia, *Submission 20*, p 3; Combined Community Councils of the ACT, *Exhibit 1*, p 1; Greater Canberra, *Exhibit 13*, p 2; Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Exhibit 31*, p 2.

The Institute is supportive of changes to RZ2 zoning to include more diversity of dwelling typology through the inclusion of apartments, and changes to RZ1 zoning to allow for increased density through sub-division of blocks over 800m² with the ability for additional dwellings limited to 120m² in floor area. However, the Institute remains concerned that changes to RZ1 and RZ2 zones will not provide the necessary outcomes required to deliver housing density and housing choice commensurate to the requirements for projected housing demand in our city both in the short-term and long-term.²⁵²

3.204. Similarly, the Property Council of Australia was sceptical:

The Interim Territory plan as a policy outcome seeks to achieve greater density and more housing for Canberra. The Property Council has concerns that what has been released does not go far enough. For example, the changes to RZ1 to allow the building of a secondary dwelling on blocks over 800sqm will not achieve adequate change. Additionally, the secondary dwelling is limited to 120sqm, but must pay the full lease variation charge in schedule 2 of the LVC Determination. All RZ1 zones are not created equally and there should be consideration that urban infill should be focussed around areas appropriate for densification and on the basis of proximity to services and adjacency to public transport and infrastructure. Utilising the existing road hierarchy as designated by Transport Canberra and City Services and location to local centres, we should reform RZ1 for those properties to allow increased development rights for blocks over 700sqm similar to the Mr Fluffy blocks. The Government should also allow subdivision of RZ1 blocks greater than 950sqm to stimulate density and build the houses that we need.²⁵³

3.205. The Combined Community Councils of the ACT was not impressed by the policy: ‘The new RZ1 Policy (>800m² allows second title <120) seems ill-considered, given it's emphasis as the key "announceable" of the new planning system’.²⁵⁴

3.206. Greater Canberra wrote in their EOI that the interim Territory Plan ‘does not include meaningful zoning reform to enable additional infill housing supply, it is unclear how the 70/30 infill target will be met’ and ‘does not include an effective model of RZ1 densification that will meaningfully contribute to infill housing’.²⁵⁵

3.207. They expanded on this in the public hearing:

Well, we went into it optimistic and then, within two hours of looking at it, we just realised all these technical problems that we thought would be a major barrier to implementation—because, if it were an RZ1 dual occupancy policy which was effective, it would still be better than nothing. I do think that moving from RZ1 to RZ2 is better for reasons that Ms Clay has talked about around consolidation and allowing for rows of townhouses and terraces in larger developments that have

²⁵² Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 1.

²⁵³ Property Council of Australia, *Submission 20*, p 3.

²⁵⁴ Combined Community Councils of the ACT, *Exhibit 1*, p 1.

²⁵⁵ Greater Canberra, *Exhibit 13*, p 2.

better outcomes on the whole. But it could have been a positive step. The main reason why we are disappointed is not just that it was an insufficient step, but rather because there were all these problems in the design of this policy that made it unviable. That means that we end up with this position where in five years time my real fear is that if this policy goes ahead and we are having a conversation about zoning reform and housing in this territory, and someone says, “Well, we did that RZ1 dual occupancy thing, and in the time since, only about 312 of those have been built.”²⁵⁶

- 3.208. Richard Nash was also sceptical, writing, ‘The 120m2 limit does not, in my view, provide sufficient flexibility to provide for families wishing to move into established areas’, and that ‘The big brother, little brother approval will arguably not achieve desired outcomes of urban infill in its current form’.²⁵⁷
- 3.209. Red Hill Residents Group indicated that the poor outcomes from previous dual occupancy reforms fail to instil confidence in this recent policy change:

In RZ1 urban zoned areas, the Government has announced that separately entitled dwellings of up to 120 squares will be permitted on any block over 800 square metres. The intention is to chart a path for urban infill with smaller, more affordable housing options with a lighter footprint. Some oppose this new policy as not going far enough in allowing redevelopment to meet housing needs. That might imply development at any cost. And there is concern with potential outcomes that feed only self-interested financial forces. Some previous dual occupancy infill development has not always held onto the best of Canberra, with an outcome seen only in the profit increase from oversized, block consuming housing, denying any sense of place. No real increase in smaller, affordable housing options with a light footprint seemed to follow.²⁵⁸

- 3.210. Bruce Paine felt the policy’s restriction to blocks of at least 800m2 would limit the policy’s potential:

For example, limiting the ability to sub-divide blocks in RZ1 (‘dual occupancy’) to blocks of 800 square metres and larger will exclude most people in Canberra. While a minimum is obviously required, it would be useful for Canberrans to know how many additional blocks would potentially be available if the minimum is reduced to 700 square metres (which is the minimum that applies to so-called Fluffy blocks).²⁵⁹

- 3.211. Emmanuel Notaras felt that Canberrans on eligible blocks would be disincentivised to take up the dual-occupancy policy as ‘dividing the block would result in a lesser value of the sum of the two blocks than the value of the block remaining as it is now...’. Mr Notaras

²⁵⁶ Mr Howard Maclean, Greater Canberra, *Committee Hansard*, 6 December 2023, p 68.

²⁵⁷ Mr Richard Nash, Managing Director and Head of Planning Practice, Purdon Planning, *Exhibit 31*, p 2.

²⁵⁸ Red Hill Residents Group, *Submission 1*, p 1.

²⁵⁹ Mr Bruce Paine, *Exhibit 6*, p 1.

ultimately was of the view that this would see a large number of blocks remaining 'quarantined'.²⁶⁰

- 3.212. The Australian Institute of Architects had concerns too regarding the policy's aim to achieve greater housing density:

The Institute remains concerned that in addition to RZ1 zone changes not providing necessary opportunity for achieving a compact city through increased density, it will also lead to an increase in unsustainable practices through the unnecessary demolition of housing, with associated embodied carbon.²⁶¹

- 3.213. This was more firmly stated in the public hearing:

Our feeling is that the changes to the RZ1 zoning are going to provide a very minimal impact to density and absolutely no change to dwelling typology. We asked EPSDD a series of questions, wondering if they have actually done any analysis on the quantity and the density that this might contribute, and we were extremely concerned to hear that no analysis has been done. More concerning was that the number of RZ1 blocks was not even clear. It has been reported that there were 35,000 blocks, then 40,000 and now 45,000 blocks. Our understanding is that it is around the 42,000 mark.²⁶²

- 3.214. The Australian Institute of Architects also had concerns regarding the affordability of the scheme:

The Institute has also looked at the affordability of subdivision and development of new housing in RZ1 zones and believes that economically many suburbs, such as Scullin and Gowrie mentioned above, will not meet affordability targets. Lease variation charges, high construction costs, and lower valuations of land and assets in many suburbs, particularly in the districts of Belconnen and Tuggeranong, result in reduced affordability and highrisk outcomes for financial institutions providing construction loans.²⁶³

- 3.215. Peter Jamieson too identified the Lease variation charge as a barrier to the successful implementation of the policy:

The codified LVC ranges from \$63,444 to \$315,000 increasing from previous \$20,000 to \$30,000 maximum on eligible blocks. First land owners have already paid their stamp duty and ongoing rates/taxes. A lease variation charge when they are effectively adding more land to assist the Government with land supply as they can not keep up with demand should not be a cash grab, should it be incentivised with grants of incentivized fees waived? This also destroys feasibility of any development.²⁶⁴

²⁶⁰ Mr Emmanuel Notaras, *Exhibit 40*, p 1.

²⁶¹ Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 2.

²⁶² Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 112.

²⁶³ Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 2.

²⁶⁴ Mr Peter Jamieson, *Submission 28*, p 1.

- 3.216. Mr Jamieson estimated that adding a three bedroom house on 400m² of his existing block would result in a net loss of \$35,000 to him as the landowner.²⁶⁵
- 3.217. The Australian Institute of Architects indicated to the Committee that there appeared to be no analysis by the ACT Government as to the exact number of blocks which could be eligible to use the policy:
- The ACT government has indicated that around 40,000 blocks would be eligible to take advantage of the changes to RZ1 zoning. They also indicated in a recent PACICERG meeting that no specific review of block eligibility was conducted and that the figures presented were based solely on a calculation of the number of RZ1 blocks over 800m² in the ACT.²⁶⁶
- 3.218. The Australian Institute of Architects instead conducted their own estimate of the actual number of eligible blocks, completing a review of blocks in 3 suburbs (Hawker, Gowrie, Scullin) to assess whether the RZ1 changes will support the projected number of additional dwellings suggested by the government. The Australian Institute of Architects found that ‘whilst there is a large number of eligible blocks (over 800m²), existing site conditions led to only a small number having infill potential’, with only 155 out of 1,457 blocks over 800m² across the three suburbs being suitable for development without the demolition of an existing dwelling on site.²⁶⁷
- 3.219. The results by suburb were:
- Hackett: 5 percent or 57 blocks have infill potential;
 - Gowrie: 4 percent or 40 blocks have infill potential; and
 - Scullin: 6 percent or 58 blocks have infill potential.²⁶⁸

Committee comment

- 3.220. The Committee is of the view that the dual occupancy policy may be limited in its uptake.
- 3.221. Evidence presented to the Committee suggests that the RZ1 changes are likely to have limited impact on meeting the housing targets for the expected population growth. Noting this is one facet of meeting housing targets, the committee is of the view that changes should be made to the policy to provide increased opportunities for re-development with a limited impact on density and overall neighbourhood character and amenity while improving the housing typologies and allowing opportunities for affordable housing products.

²⁶⁵ Mr Peter Jamieson, *Submission 28*, pp 1–2.

²⁶⁶ Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 1.

²⁶⁷ Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 2.

²⁶⁸ Australian Institute of Architects, ACT Chapter, *Exhibit 19*, p 2.

Recommendation 12

The Committee recommends that the Territory Plan be amended (including whether appropriate in the District Policies) to allow more zoning changes in RZ1 than is currently permitted under the Territory Plan.

- 3.222. Given the general pessimism from planners and lay people alike to the potential uptake and overall success of the RZ1 dual-occupancy policy, the Committee is of the view that it is appropriate for the Territory Planning Authority to report on a yearly basis in the EPSDD Annual and Financial Reports statistics on the uptake of the policy.

Recommendation 13

The Committee recommends that the Planning and Land Authority report against the outcomes of the dual occupancy reforms including:

- how many Development Applications for dual occupancies are lodged;
- how many are approved;
- how many result in new dwellings;
- what the net gain of new dwellings is (subtracting knockdown rebuilds); and
- the suburbs and areas in which dual occupancies are built.

Housing density

- 3.223. More broadly, a number of witnesses found the new territory plan unconvincing or uninspiring on the issue of increasing housing density. For example, Greater Canberra wrote: 'Unfortunately, as it stands, the interim Territory Plan is a status quo document. It does next to nothing to enable the green, walkable neighbourhoods with medium-density and mid-rise housing that our city needs'.²⁶⁹
- 3.224. Mr Rob Henry similarly felt that the Territory Plan gave no clear sense of how the Territory is going to achieve greater housing density:

Yes. We do not actually have a clear perspective of where we are going to reach our 140,000 additional houses by 2050 target. We have an idea to literally 4,100 blocks, which I calculate down to about 1,400 blocks of an additional dwelling of 140 square metres. That is what has been given to us in RZ1. With RZ2 zoning, we are really supportive of the change with apartments to that. It is not increasing density; it is making it easier. The design solutions will be better, but it is not an

²⁶⁹ Greater Canberra, *Exhibit 13*, p 1.

increase to density. We have not been given any understanding of how we are going to do density and deal with the housing crisis within this Territory Plan.²⁷⁰

Missed opportunities to increase the missing middle

3.225. Several witnesses and submitters advocated for changes to RZ1 and other housing policy settings to facilitate greater uptake of the dual-occupancy policy and to increase the ‘missing middle’ more generally.

3.226. Mr Emmanuel Notaras advocated for a more flexible approach to be taken in the policy:

Intuitively I suspect that the “missing middle” concept requires generous and flexible spaces in which to flourish and deliver on its objectives. I suspect the proposed policy is too much a “one size fits all” approach.

The outcome we wish to achieve is to maximise the number of people we can accommodate in Canberra’s existing built space. The path to that outcome is not simply adding one additional dwelling to each 800m² RZ1 block in the Territory. A population focus will reduce the unit price of putting a roof over each persons’ head. Creating dwellings of a maximum size puts a cap on population and makes the unit cost of each shelter per person more expensive.²⁷¹

3.227. The Australian Institute of Architects also advocated for more flexibility in the policy, suggesting ‘additional RZ1 zoning changes that allow the typologies explored (Duplexes, Manor Housing, and Multigenerational Housing) an opportunity to be implemented without unnecessary delays created by the requirement of individual Territory Plan changes for individual blocks’.²⁷²

3.228. This was reiterated by Mr Henry in the public hearing in more detail:

Sixty-four per cent of residential sites are RZ1. So it is important to look at low-rise density for our city, because the majority of our blocks are not going to be able to accommodate that. We need to look at more housing typologies. From the institute’s perspective, there are three propositions I could put forward to you. The first is to allow more housing typologies within the current RZ1 framework, which could be site specific, such as changes to corner blocks or blocks of a certain size, or area specific, which is blocks in a particular area or distance from a local centre. Additional typologies need to include duplexes, small apartment buildings, manor houses, co-housing et cetera. It is a must. So that is one idea.

A second idea is to progressively change RZ1 into RZ2 zoning. That change would occur through transport corridors, areas that are closer to local centres and group centres et cetera. That approach is currently about to be applied in New South Wales. So we are going to see this happening in Queanbeyan, just across the

²⁷⁰ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, pp 116–117.

²⁷¹ Mr Emmanuel Notaras, *Exhibit 40*, p 2.

²⁷² Australian Institute of Architects ACT Chapter, *Exhibit 19*, p 2.

border. I guess the third approach is to really rip the bandaid off and delete RZ1 and start with RZ2 zoning, which I am aware is part of the Missing Middle Canberra coalition perspective.²⁷³

3.229. He suggested such changes would enable better outcomes:

Yes. We need to get serious about RZ1; we really do. There is a huge loss of opportunity with the current Territory Plan because there is literally no diversity in typology. The moment that we add diversity and typology, we are going to see great outcomes for the city.²⁷⁴

3.230. The Property Council proposed in their submission to the ACT Government's Planning review:

All RZ1 zones are not created equally and there should be consideration that urban infill should be focussed around areas appropriate for densification and on the basis of proximity to services and adjacency to public transport and infrastructure.

Utilising the existing road hierarchy as designated by Transport Canberra and City Services and location to local centres, we should reform RZ1 for those properties to allow increased development rights for blocks over 700sqm similar to the Mr Fluffy blocks. The Government should also allow subdivision of RZ1 blocks greater than 950sqm to stimulate density and build the houses that we need.²⁷⁵

3.231. Some witnesses and submissions also advocated for more supporting policies to assist the Territory Plan in achieving its goals of greater densification. For example, the Property Council of Australia wrote in their submission:

The ACT Government has called for gentle urbanism to be used within the planning system however the Interim Territory Plan does not have supporting policies to incentivise this.

The Government needs to employ greater incentivisation to drive missing middle and providing the right housing choices through tax concessions. By providing rates and land tax concessions for adaptive reuse within the city we can change our aging office stock into residential to improve housing supply.²⁷⁶

3.232. Mr Emmanuel Notaras advocated for block consolidations:

Stakeholders of sections within a suburb should be permitted to consolidate individual residential blocks. They could then be redeveloped, subject to appropriate guidelines, to deliver a range of residential options ranging from high density, possibly along major transport routes, and backing on to medium density

²⁷³ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 113.

²⁷⁴ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 113.

²⁷⁵ Property Council of Australia, *Submission 20*, p 3.

²⁷⁶ Property Council of Australia, *Submission 20*, p 5.

deeper into the precinct, feathering down to RZ1. A smaller consolidation of say two or three blocks could deliver aging in place townhouses.²⁷⁷

- 3.233. Greater Canberra also touched on the issue of block consolidations, highlighting to the Committee that the new Territory Plan ‘continues to ban anything other than detached houses on the majority of RZ1 land by prohibiting block consolidation or multi-unit housing on blocks smaller than 800 sqm’.²⁷⁸

- 3.234. Mr Tony Trobe also thought consolidation was a missed opportunity:

I think Richard is on the right track. A bigger global picture on consolidation is important. In terms of the interim plan, it has missed this completely, I think. It is like they have concentrated on the tail of the dog instead of the body, which is the suburban area, so I think there is a missed opportunity on that particular issue.²⁷⁹

- 3.235. Mr Fitzpatrick of the Planning Institute of Australia thought that the RZ1 discussion had been unnecessarily prioritised and that there were opportunities with RZ2 to increase housing:

Regarding the missing opportunity, at that time we felt there was an opportunity to tweak some of the specific controls in the Territory Plan. Some of that has occurred. The RZ1 issue has pretty much taken over the entire debate, from our view. We thought that the RZ2 zones could contribute more to housing opportunities and housing diversity. There are significant RZ2 zones around group centres and local centres, in suburban areas. A quick review of those zones showed that there has been negligible development in suburban areas over the last decade or more.²⁸⁰

- 3.236. The Planning Institute of Australia specifically advocated for tweaking density controls:

For example, if a developer bought two 750-square-metre blocks so they had a 1,500-square-metre development area, they could generally only build five units on that—six if it is adaptable housing or what have you. If you just change that to seven, then the entire development economics change. At the five-unit level, based on some pretty basic development economics we have undertaken, you would have to sell the resulting units at a higher price than units were selling for in that general area. You are taking a significant risk, from a developer’s point of view, which means they leave it alone and only develop in the RZ2 inner-city areas.²⁸¹

- 3.237. This included reducing site coverage:

²⁷⁷ Mr Emmanuel Notaras, *Exhibit 40*, p 3.

²⁷⁸ Greater Canberra, *Exhibit 13*, p 1.

²⁷⁹ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 29.

²⁸⁰ Mr Trevor Fitzpatrick, immediate past president, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 118.

²⁸¹ Mr Trevor Fitzpatrick, immediate past president, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 119.

...I am also saying that, at the same time, because we are now using site coverage as a determining factor in site planning, you could actually reduce the site coverage and achieve greater density. At the moment, it is 45 or 50 per cent. You could drop that to 40 per cent and therefore have more open space and a potential canopy of trees and the like and still achieve a higher density. That is slight tweaking in the RZ2 zone. That is what I was getting at with the design-led housing choices thing in that submission some time ago.²⁸²

- 3.238. More broadly the Planning Institute of Australia advocated for assessing sites on their merits as part of an outcomes focus as opposed to a strict numbers-based system:

I think the main item with RZ2 or any other opportunity is that it should not be numerical and it should not just be because you have X amount of block where you can have X number of units. It is about actually assessing the site itself on its own merits, which the new system should be doing. That is an outcomes based focus. Allowing a bit more flexibility is the main key. So, if you have a site that is slightly bigger but hits the number system, then you can only do five units. It is about assessing whether that block is quite far away or whether there is any public open space. Allowing an extra unit means that you can, as Trevor said, have a bit more economics and you can have a bit more diversity in the types of units you are presenting.²⁸³

- 3.239. Site coverage restrictions were cited by others as barriers to the RZ1 policy's potential success. For instance, Mr Jamieson identified the barriers with house, tree and greenery space requirements, identifying the policy of new houses requiring to occupy no more than 40 percent of the block as disincentivising the subdivision policy by limiting the usable dwelling space. He also identified the proposed tree and greenery requirements as being too onerous and lacking flexibility in terms of removal and relocation, and thereby being a possible impediment to planning on blocks of unique shapes.²⁸⁴
- 3.240. Mr Tony Trobe said the 40 percent footprint requirement is restrictive and outlined the, 120m2 maximum size requirements, single storey restrictions, and LVC as making the 'additional dwelling proposition largely unworkable and will not produce the desired outcome', and was sceptical as to whether many would take up the opportunity. More broadly, Mr Trobe stated in his exhibit that 'The new TP is an extremely timid approach to issue of allowing dual or multiple occupancies in RZ1'.²⁸⁵
- 3.241. Greater Canberra expressed to the Committee at the public hearing their concerns with the inclusion of basements within the site coverage ratios for the purposes of DV369 sites, 'as it means that you cannot do the kinds of apartments which I live in, for instance – which are permitted blocks which have full-plate underground parking with courtyards with

²⁸² Mr Trevor Fitzpatrick, immediate past president, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2033, p 119.

²⁸³ Ms Natalia Anderson, President, Planning Institute of Australia (ACT), *Committee Hansard*, 7 December 2023, p 119.

²⁸⁴ Mr Peter Jamieson, *Submission 28*, p 2.

²⁸⁵ Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p 3.

greenspace above that underground carpark – because it counts towards the site coverage ratio for the purposes of greenspace’.²⁸⁶

3.242. Mr Ian Hubbard discussed the provision of housing on private land:

I think a bigger issue, as well, in our inner city areas, is the ongoing privatisation of community land, and I think the Committee needs to address some of the factors about that, because the new Territory Plan enables proponent-initiated changes to the Territory Plan for the first time. It also expands—an idea that interests you a lot, Mr Parton—the definition of what type of housing can go on to community facilities land. I think once you allow residential housing on community facilities land, there is no land for community facilities, because it is a much higher and more valuable use of that land as far as the market is concerned, so we lose the community estate, which is all our community facilities land. So, in the future, as the population increases in the inner city, we lose all those community land areas which would have gone to primary schools, health facilities and meeting rooms. The government, if they want to get that land back, will have to go into the market and buy at market prices.

At the moment, you will see developers asking for lease variations, discounts, concessions and all sorts of things to incentivise this. I am thinking, “Well, that is the ratepayer handing over money for the developers to take away community assets.” Those community assets underpin the financial performance of the ACT, whether it is from a ratings side of things or the future value of the asset, so we have got to be very careful of that. I think the current changes to the plan are, in my view, a little bit sneaky around the definition of what is allowable on community facilities land, and you should have a look at that. We are really sort of selling out our community assets at the moment.²⁸⁷

Committee comment

- 3.243. The Committee considers that there is an opportunity for the Territory Planning Authority to consider removing dwelling number constraints for all housing, or for social, community and public housing, in residential land and instead rely on site coverage and height limit restrictions to avoid heat islands and lack of green space.
- 3.244. The Committee also considers that the Territory Plan missed an opportunity to allow higher densities in specific locations close to shops and community facilities and allow planning on a precinct basis.

²⁸⁶ Mr Howard Maclean, Convenor, Greater Canberra, *Committee Hansard*, 6 December 2023, pp 71–72.

²⁸⁷ Mr Ian Hubbard, Chair, Ainslie Residents Association, *Committee Hansard*, 6 December 2023, p 25.

Recommendation 14

The Committee recommends that the Territory Plan be amended to allow higher densities in specific locations, such as RZ2, RZ3 and RZ4 zones, which are close to local shops, adjacent to public transport and community facilities providing opportunities for greater block consolidations that would:

- permit planning on a 'precinct' basis; and
- provide opportunities for greater densities and heights.

Recommendation 15

The Committee recommends that the ACT Government implement further policy changes to the Territory Plan to encourage community housing or public housing on underutilised community-facility zoned land, like church land, whilst ensuring that we protect recreational and community spaces.

Urban boundaries

- 3.245. The Office of the Commissioner for Sustainability and the Environment (OCSE) also raised to the Committee what they perceived as the missed opportunity of discussing urban boundary limits to restrict urban sprawl, raising the environmental impact of greenfield development:

Yes, I think so. Like I said, there are a lot of good intentions in there, but the Territory Plan, for one thing, does just assume that there is going to be a continuation of development: there is going to be more greenfield. There does not seem to have been any thought earlier in the process to say, "Do we actually want to continue to do greenfield development? Can we look at limiting the size of the town?"—those sorts of things.²⁸⁸

- 3.246. In raising the issue, the OCSE argued that the existing processes and systems are insufficient, referencing an *Environment Protection and Biodiversity Conservation Act 1999* (Cth) review which demonstrated Environmental Impact Statements do not account for the cumulative impacts of greenfield developments.²⁸⁹ The OCSE agreed with the Committee that the lack of early, strategic, larger-scale planning is a perennial issue.²⁹⁰

²⁸⁸ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 99.

²⁸⁹ Ms Victoria Herbert, Acting Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 100.

²⁹⁰ Ms Victoria Herbert, Acting Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 100.

3.247. In discussing the issue of an urban boundary, the OCSE noted that it was something their office had discussed, and that it was worth having a conversation on the issue, noting urban sprawl or expansion is something the public seems to be aware of.²⁹¹

3.248. Indeed, the 2019 *ACT State of the Environment* report found that:

Between 1991 and 2016, the ACT's urban land area grew by 57%, compared to a population increase of 43% over the same period. If this ratio of urban growth to population continues, the ACT's current urban footprint would need to increase by a further 46% by 2041 to accommodate projected population growth.²⁹²

3.249. The Report also indicated that the ACT will need an additional 100,000 new dwellings by 2041 to accommodate the projected accommodation growth, however, there is only potential for 29,000 new homes in existing greenfield areas zoned as future urban areas.²⁹³ It also found that 'To minimise the growth of the ACT's future urban footprint there needs be an increase in population density, the number of medium and high-density dwellings, and the amount of urban infill compared to greenfield development'.²⁹⁴

Committee comment

3.250. The Committee is of the view that a broader approach and understanding of the environmental impacts of greenfields developments needs to be undertaken when proposing greenfields developments.

Novel Housing typologies

3.251. In responding to the question from the Committee as to whether the Territory Plan should be focusing more on 'good infill' rather than 'endless sprawl', the OCSE pointed to the 'Showcase' commitment in the *Parliamentary and Governing Agreement for the 10th Assembly* (PAGA), as a missed opportunity.²⁹⁵

3.252. Ms Victoria Herbert said:

It is a big question. I can just speak to one particular component. I guess there is a missed opportunity. I know that there is the showcase, sustainable development part of the PAGA commitment. I think there could be some opportunities to do some showcase, green-space oriented infill development, really to shift some public perception around infill densification where there is a bit of public pushback.

²⁹¹ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 101

²⁹² Office of the Commissioner for Sustainability and the Environment, [ACT State of the Environment Report 2019](#), 2019, p 188.

²⁹³ Office of the Commissioner for Sustainability and the Environment, [ACT State of the Environment Report 2019](#), 2019, p 188.

²⁹⁴ Office of the Commissioner for Sustainability and the Environment, [ACT State of the Environment Report 2019](#), 2019, p 188.

²⁹⁵ Ms Victoria Herbert, Acting Assistant Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, pp 101–102.

We are really seeing how we could have substantial, public greenspaces; how they are re-designed to increase ecological function but also to have a variety of active and passive recreational uses to service higher density apartment complexes. I think there is a lot of scope to really do something that has been missed within this current Territory Plan.²⁹⁶

- 3.253. The ‘Showcase’ commitment commits the ACT Government to ‘Driving sustainable building innovation by piloting land release to include at least one ‘showcase’ sustainable development each year, such as a 150% living infrastructure plot ratio or a ‘Scope 3’ zero-emissions development that produces no net greenhouse emissions during construction and operation, and reduced car parking’.²⁹⁷
- 3.254. The OCSE highlighted to the Committee that the average number of occupants per house is approximately 2.1, and that such a low number is of a concern from a sustainability perspective.
- 3.255. Given this and the large size of houses in the ACT, the OCSE suggested that there could be policy setting changes to permit people to take an existing home and adapt it to suit co-living:

Yes. You have a big house footprint for not many people, and whether there are policies that could be put in place, or even houses specifically designed to be share houses, recognising that those people who live in share houses now are not necessarily just fresh out of uni or fresh out of school. It is more mature people who are now going into them after divorce or other situational changes. That seems to be something that maybe the housing market could adapt to a bit more—that there are people who are maybe looking to rent a room. Also, this is kind of outside the purview of the office, there has been a lot of conversation over the last few years about the loneliness epidemic and the impact on people’s mental health; and, again, building those sorts of houses that would suit co-living seems like it would potentially help to address that.²⁹⁸

- 3.256. The OCSE also suggested that this would be beneficial from a sustainability perspective too, adding, that it is more sustainable to re-use an existing structure as opposed to knocking it down to build two or more new structures in its place, noting the embodied carbon and emissions within existing houses, and that it would reduce the production of scope 3 emissions.²⁹⁹

²⁹⁶ Ms Victoria Herbert, Acting Assistant Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, pp 101–102.

²⁹⁷ ACT Government, [Parliamentary & Governing Agreement: 10th Legislative Assembly Australian Capital Territory](#), Appendix 1, Part A, paragraph 3(ii).

²⁹⁸ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, p 102.

²⁹⁹ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 102.

3.257. In referencing knock-down re-builds, the OCSE also added that with knock-down re-builds counting towards the ACT Government's 70 percent infill target, it incentivises rebuilds over re-using existing materials and structures.³⁰⁰

3.258. North Canberra Community Council also expressed a desire for developments to showcase best practice infill:

There is an urgent need to identify and quarantine for public housing and exemplary urban infill centrally located blocks, such as surface carparks, but also areas currently occupied by Yowani Golf Club and Thoroughbred Park. Large areas such as these offer unique opportunities to showcase best-practice urban densification, including social infrastructure and biodiversity connectivity, for once adding, rather than destroying, social and ecological values. They would demonstrate design exemplars sought by the design guides.³⁰¹

3.259. The Committee also discussed, in the context of co-living, a commitment of the ACT Government in response to a June 2017 Assembly motion which asked the ACT Government to engage with the community and industry stakeholders on how to deliver demonstration housing proposals that promote best practice, including:

- excellence in construction and design quality;
- carbon neutral buildings;
- medium density infill;
- innovative planning and engagement approaches;
- innovative housing products and typologies;
- close partnership with industry bodies; and
- options for public and affordable housing³⁰²

3.260. The Office of the Commissioner for Sustainability and the Environment was supportive of Demonstration housing in changing perceptions and challenging pre-conceived notions of what infill and density means, referencing a demonstration housing project in North Wright:

North Wright—I know that that is a really interesting project that is still very much in the planning phases of doing the missing middle and having a concentrated but very activated, in a social way, living infrastructure completely integrated. I cannot really speak to the efficacy in terms of the outcomes because I do not know; I have not seen the finished products. But I think, realistically, it is a great initiative, and, specifically, as we are speaking about green-space oriented infill, I think there is definitely a larger, precinct scale to show how we really can do it in a way where there is greenspace, and the living infrastructure is not

³⁰⁰ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 103.

³⁰¹ North Canberra Community Council, *Submission 31*, p 2.

³⁰² ACT Legislative Assembly, *Minutes of Proceedings*, No 18, 7 June 2017, pp 263–264.

compromised. Because there are a lot of concerns that quality of life will be compromised in an infill context. I think it is really how we do it—there are so many different versions.³⁰³

- 3.261. In referencing their argument for greater typologies of housing, the Australian Institute of Architects also highlighted the importance of demonstration housing in changing perceptions:

I think demonstration projects are it unfortunately. The Institute of Architects has done multiple design competitions in this area. Our members have contributed to many demonstration housing projects, real projects. There was one in Coombs, for instance, in 2008 that was never realised—and this continues to happen. Demonstrating housing projects are needed to create change in the perception of the general public. There are plenty of examples around the world but people need to see it in place.³⁰⁴

- 3.262. Mr Trobe however observed a gap in the housing typologies that are demonstrated in the demonstration Housing project and those that are actually allowed under the Planning system:

- The key point in regard to the Demonstration Housing is that the government is intending to demonstrate things that are not going to be allowed to be built.
- What is the point of demonstrating something that can't be achieved.
- The 2 triple occupancies that are being demonstrated in RZ1 are intended to be good examples of what can be done on large blocks in RZ1 but the initiative and concept has not been followed through into the interim Territory Plan.³⁰⁵

Committee comment

- 3.263. The Committee is of the view that it is important to showcase different housing typologies to the Canberra community in order to encourage greater diversity and uptake of housing options. The Planning Authority and ACT Government should strive to put in place policy settings that will facilitate people sharing a home with separation within the building to adapt and reuse existing homes.
- 3.264. The Committee also considers that in order to maximise the benefits and learnings from a demonstration housing project and other similar initiatives, it is essential that an evaluation of these initiatives is taken as soon as possible after completion and occupation.

³⁰³ Ms Victoria Herbert, Acting Assistant Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 104.

³⁰⁴ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 115

³⁰⁵ Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p 3.

Recommendation 16

The Committee recommends that the evaluation of initiatives in the Demonstration Housing Project should include an early assessment soon after the occupation/completion of the building so that any learnings can be understood and used to guide any amendments to the Territory Plan.

Opportunities to encourage more community and public housing

- 3.265. The Committee heard from Corrine Dobson from ACTCOSS that the market is a key obstacle to providing more affordable housing, as well as public and community housing:

I want to reinforce what Devin said. It is important to put in perspective the scale of the challenge that we have in the ACT around social and affordable housing. We have seen overall in the past 10 years that the supply of social housing has actually declined in number, even though the population has increased. At the same time we have seen, as we are all very familiar with, prices in the rental market escalate. The need for that housing is very high and is projected to grow in the coming years. We need to be looking at all of the different ways that we can grow that housing, and some of that is certainly within the planning system. There are other things that are needed alongside that. It needs to be a whole-of-government strategy.

As part of that, there is a range of different mechanisms that we need to look at to increase the supply, both of public housing and of community housing. The challenge for community housing is that, in the current market, as Devin was alluding to, it is just not financially viable or sustainable to purchase land and develop it. There are some concessional arrangements and other things that are in place to try and support the growth of community housing, but we are certainly not seeing that at the scale that is needed to meet current demand, or anywhere near current demand, let alone the demand into the future.³⁰⁶

- 3.266. Ms Dobson argued that more needed to be done to make community housing more financially viable:

We do need to look at more opportunities for reduced prices on land sales and coinvestment mechanisms. We can look at the government purchasing the land, the community housing provider developing it, and there is shared equity and other arrangements to try and support it, to make it financially viable. But it needs government to step in to support the sector, because it is just not financially possible.³⁰⁷

³⁰⁶ Ms Corrine Dobson, Head of Policy, ACTCOSS, *Committee Hansard*, 7 December 2023, p 156.

³⁰⁷ Ms Corrine Dobson, Head of Policy, ACTCOSS, *Committee Hansard*, 7 December 2023, p 156.

- 3.267. This was supported by her colleague, Dr Devin Bowles, who said to the Committee that ‘There are some real opportunities to unlock land for community housing providers at discounted rates so that they can do what they do so well’.³⁰⁸
- 3.268. The Committee notes that section 274(1) of the Planning Act 2023 provides the general rule that ‘the Territory Planning authority must not grant a lease other than for the payment of an amount that is not less than the market value of a lease’.³⁰⁹
- 3.269. Section 274(2) of the *Planning Act 2023* however lists the circumstances in which section 274(1) does not apply, which includes: ‘a land rent lease’; ‘the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid’; and ‘the grant of a lease of land prescribed by regulation to the University of NSW’.³¹⁰
- 3.270. The Committee observes that the *Planning Act 2023* allows the Government to consider granting land at less than market value in some situations, but not for public housing or community housing.

Committee comment

- 3.271. The Committee heard that selling land below market value to Housing ACT and community housing organisations would increase the provision of more affordable housing. It would be beneficial to understand what current barriers are in place which prevent this occurring.

Recommendation 17

The Committee recommends that the ACT Government provide an explanation of the barriers that prevent land being sold below market value to Housing ACT for public housing and community organisations for community housing, and explain the effect this situation has on the ability for Housing ACT and community housing organisations to provide public and community housing.

Concerns around suburban character

- 3.272. In response to questions from the Committee around zoning reforms under the new Territory Plan, the Chief Planner indicated to the Committee that RZ1 changes were limited due to concerns around maintaining suburban character, whilst removing the restrictions on RZ2 zones which would allow further development around local centres and corridors:

The changes that the government has presented in the interim Territory Plan are aimed at providing for greater choice and some additional housing, but not to continue to do all the heavy lifting. In a way, that will maintain that suburban character. Then it is for the RZ2, 3, 4 and 5 zones to do that heavier lifting. We have made a number of changes in relation to the RZ2, in terms of being able to

³⁰⁸ Dr Devin Bowles, CEO, ACTCOSS, *Committee Hansard*, 7 December 2023, p 156.

³⁰⁹ *Planning Act 2023*, s 274(1).

³¹⁰ *Planning Act 2023*, s 274(2).

subdivide without having to build—and I might ask Mr Green to talk about some of the other changes.

But I should note that there is still quite a lot of capacity in the existing RZ2. So we do not need replicate what we are seeing in RZ2 into the RZ1, in my view, because there is still capacity in the RZ2. What we need to do is make sure that we are providing more opportunity and make sure that we are responding to what we have been hearing in relation to some of the constraints in developing the RZ2 zone within the planning sphere, because there are others—that would allow more development in the RZ2 zones, which is close to local centres and corridors—but maintain that important character of the RZ1. People say they want it to be suburban but generally accepted that there needed to be an increase in housing. But it is not for the RZ1 to do all of the heavy lifting.³¹¹

3.273. Mr Ponton reiterated this later in the hearing:

What the government has proposed and agreed to—and it is incorporated into the interim plan—are additional opportunities in the RZ1 zone that respect what we have heard from the Canberra community in terms of maintaining that suburban character. It is not completely changing the character of areas. As I said, we have also given consideration to what has been happening in the RZ2, 3, 4 and 5 zones and whether or not we can make changes there, which we have, to encourage that higher density development to occur where people need it most—so close to shops and close to services, as opposed to areas of a more suburban character.³¹²

3.274. Suburb character and a ‘sense of place’ were also raised by others in the public hearings. For example, the Inner South Canberra Community Council raised it specifically as a concern in their expression of interest to the Committee, writing: ‘Development in the RZ1 zone is leading to the (unintended) loss of original fabric in heritage precincts’.³¹³

3.275. Red Hill Residents Group too raised a ‘sense of place’ as an issue:

In RZ1 urban zoned areas, the Government has announced that separately entitled dwellings of up to 120 squares will be permitted on any block over 800 square metres. The intention is to chart a path for urban infill with smaller, more affordable housing options with a lighter footprint. Some oppose this new policy as not going far enough in allowing redevelopment to meet housing needs. That might imply development at any cost. And there is concern with potential outcomes that feed only self-interested financial forces. Some previous dual occupancy infill development has not always held onto the best of Canberra, with an outcome seen only in the profit increase from oversized, block consuming

³¹¹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 165.

³¹² Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 167.

³¹³ Inner South Canberra Community Council, *Exhibit 5*, p 2.

housing, denying any sense of place. No real increase in smaller, affordable housing options with a light footprint seemed to follow.³¹⁴

- 3.276. In the public hearing, the Committee observed that a large degree of opposition to the new Territory Plan appeared to emanate from Deakin and Yarralumla.³¹⁵ In response, Mr Colin Walters of the Inner South Canberra Community Council (ISCCC) was of the view that this was because the ISCCC's efforts to raise local consciousness.³¹⁶ Mr Peter Elford of the Gungahlin Community Council and Combined Community Councils added that in his view the older parts of Canberra have a 'very strong and very defined sense of place' that is not as strong as new areas such as Molonglo and Gungahlin. He further explained:

...The older suburbs, with older residents who have seen the trees grow, who have been part of the development, have a stronger sense of place. I think it is completely logical and rational that there are people who are more passionate about places they have been in longer, and they have the time and resources and desire to preserve what they perceive are the values of those areas.³¹⁷

- 3.277. However, Mr Elford added that this did not necessarily mean that areas like Gungahlin do not have a sense of place, but that it is instead grounded in facilities and services:

The residents of Gungahlin, as a counterpoint, have a very strong sense of place, but it is around: "The roads aren't duplicated. I can't find parking. Traffic doesn't work. There aren't enough community facilities. We lack access to facilities. There isn't a sense of employment." These are characteristics in a new sense of place that has not built those facilities and services yet. If you are in the inner south or north Canberra, those facilities are well-catered for. You have the time and you have had the life experience to consider that the trees are important, the quality of the parks is important, because all those things have already happened. So, yes, it is about a sense of place, but it is a sense of place over time. There are a couple of dimensions.³¹⁸

- 3.278. Others also raised sense of place in looking at how the Territory Plan and District Strategies articulate the future of a suburb or area, and identified a gap in term of how well the District Strategies achieved that.³¹⁹

- 3.279. Mr Henry for example said to the Committee:

Absolutely. Whilst the institute is supportive of the district strategies that have been put in place, I do not think that they go far enough in actually planning the future of a suburb or an area—exactly your point—and, if you can take the

³¹⁴ Red Hill Residents Group, *Submission 1*, p 1.

³¹⁵ Mr Mark Parton MLA, *Committee Hansard*, 6 December 2023, p 6.

³¹⁶ Mr Colin Walters, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2023, p 6.

³¹⁷ Mr Peter Elford, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, pp 6–7.

³¹⁸ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 7.

³¹⁹ See, for example: Mr Ryan Hensley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 75; Mr Lachlan Butler, Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2023, pp 74–75.

community along a process of change, the district strategies should really be doing that.³²⁰

3.280. This was echoed by several Community Councils, with a majority of community council representatives agreeing that the sense of place in the district strategies needed to be better defined.³²¹

3.281. Despite thinking that a District Strategies' articulation of sense of place was not as important in the context of the Territory Plan as others perhaps considered, Mr Colin Walters also considered that they could still be articulated better:

What I would say is this: you are not writing a travel brochure here. It is not the most important thing about all of this. Some of the other things that have been discussed, I think, are a bit more important than anyone's description of a garden city. We did a survey and we produced our own strategy document two years ago, and there is a lot of stuff there about exactly what people like. Some of it is reflected in the government's catalogue, in the strategy document. I think it could be better. As I say, I think, for our people, it is something around a garden city with good amenities, but I do not think it is the most important thing about this stuff, to be perfectly honest.³²²

3.282. Mr Ronald Brent, while disagreeing with Mr Walters' overall assessment of the value of sense of place in the Territory Plan, also concurred that the District Strategies did not articulate it well.³²³

3.283. In achieving better articulation, a number of community council representatives felt that better links with the community was key.

3.284. Mr Peter Elford suggested to the Committee that in order for a sense of place to be articulated as part of the planning process, it is important to have process inside government aligned to achieving that sense of place:

I think it is a simplistic question. I am wary of answering. If you care about sense of place, there needs to be a process inside government that is aligned to that sense of place—so that there is someone accountable for north Canberra or someone accountable for Woden in terms of being a good place. The district strategies talk about an urbanising agent, which I struggle to find a definition for, but it is someone responsible for place-making and the sense of place in a district.

I think that is one of the key elements that is lacking, for not just land-use planning, which is in theory what we are talking about here, but provision of services from all the other directorates and making the lived experience and the sense of place come together. It is less about what we were talking about, which

³²⁰ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 116.

³²¹ See, for example: Ms Fiona Carrick, Chair, Woden Valley Community Council, *Committee Hansard*, 6 December 2023, p 12; Mr Peter Elford, Treasurer, *Committee Hansard*, 6 December 2023, p 12; Mr Jochen Zeil, Chair, North Canberra Community Council, *Committee Hansard*, 6 December 2023, p 12.

³²² Mr Colin Walters, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2023, p 11.

³²³ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, pp 21–22.

was how do you convert a place. If you think a place is important, how do you actually implement it? What is the actual money spent, the positions employed, the people who are responsible for the outcome? Currently, we have nothing.³²⁴

- 3.285. Mr Jochen Zeil of North Canberra Community Council felt that there were previous examples of community consultation done right that could be followed, citing the example of the neighbourhood planning exercise in North Canberra:

It was a nearly year-long conversation with local communities—Watson, Hackett, Downer—about alternative developments, the development of group centres, needs for community spaces and so on. That ended up in brochures with design alternatives for high-density living, how to revitalise the town centres and so on and so on. And, after the summaries were presented, it was dumped—never looked at again. That was an example of good involvement of a local community. I think the district plans would form a good base to do that from, but the planners think it is done; it has been consulted on; this is it. The district plans would be an instrument to actually involve the community in these necessary discussions we will have to have.³²⁵

- 3.286. Mr Brent similarly felt that the consultation on the garden city cycleway was an example of a model of consultation that could be followed:

Having recently been involved in the consultation on the garden city cycleway that is being proposed for the north, I have to say that is an example of how it can be done. I went along on the very first ride through the proposed route. There were all sorts of problems. We had people like me, who knew about riding bikes in that part of town and who knew what the intersections were like, where the trees grew and where the people backed out of drives. I think I am accurate in saying that every suggestion made—from Pedal Power, myself from Dickson Residents Group, and one of the other active people involved in the consultation—has been picked up. It is going to be a dramatically more usable, safe, effective cycleway as a result of consultation, because you talked to the people who know. I think that that has got to be critical to developing the words around a sense of place. Yes, it is tedious, and it is hard work, and you have got to listen to people who do not present very well and people like me who rabbit on too long and all the rest of it! But the result can be really powerful. That is the first point.³²⁶

- 3.287. Another issue raised by some Community Councils in regard to the District Strategies and their articulation of sense of place is that they are not ambitious in considering future facilities and needs of the district.
- 3.288. For example, Mr Colin Walters of the ISCCC found the District Strategies articulation of a sense of place unconvincing:

³²⁴ Mr Peter Elford, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 8.

³²⁵ Mr Jochen Zeil, Chair, North Canberra Community Council, *Committee Hansard*, 6 December 2023, p 12.

³²⁶ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, p 22.

Could I offer a comment on that, which is that the government makes an attempt to do that in this documentation, but the inner south strategy is 275 pages long and you need to read any number of other documents, which are often overlapping and repetitive, to actually make sense of that.

We will make Officeworks a fortune at this rate because you have to keep running back there to get more printer paper to print this stuff out.

Even so, having done that, if you look at the vision for our district in the strategy document, it says:

... a diverse community that celebrates the best of the city's early history and embraces the opportunities offered by higher density living in new precincts ... a major employment area.

It is a list of components. It is as if you had asked about Mr Barr's character and you were told, "Well, he's got a head, two arms and two legs and a nice smile." That does not tell you much about his character.³²⁷

3.289. Fiona Carrick similarly indicated she found the Woden District Strategy uninspiring:

Exactly. Can I make a point on that? Our district strategy, the Woden district strategy, is uninspiring. It lacks ambition. It is shocking. This goes back to the fundamental strategy: what are our town centres there for? Under the National Capital Plan, we had the hierarchy. The city was at the top. Then we had the town centres, the group centres. Ours is lost. We have lost our recreational precinct. We are losing our public spaces. We have got no culture.

When they talk about community facilities in ours, they are referring to child care, schools and places of worship in the suburbs. That is not the community facilities that we think of. We think about an indoor sports stadium and aquatic centres where we can meet and form connections and relationships. I think that it is fundamental to the district strategy. We do not get an opportunity to talk about our social or economic development. Everything is piecemeal, one block at a time. There is no holistic planning for our social and economic development so that we can have local jobs and local places to meet. We do not get to talk about that and it is not reflected in our strategy.³²⁸

3.290. Mr Henry of the Australian Institute of Architects too felt the District strategies did not go far enough in planning the future of a suburb:

...Whilst the institute is supportive of the district strategies that have been put in place, I do not think that they go far enough in actually planning the future of a suburb or an area—exactly your point—and, if you can take the community along a process of change, the district strategies should really be doing that....

³²⁷ Mr Colin Walters, Chair, Inner South Canberra Community Council, *Committee Hansard*, 6 December 2023, pp 12–13.

³²⁸ Ms Fiona Carrick, Chair, Woden Community Council, *Committee Hansard*, 6 December 2023, p 12.

If we look at, for instance, our proposition on RZ1 zoning and changing that and having an approach for that across the whole suburb—so starting with, “In 2025, it is going to look like this,” and then the RZ2 zoning will progressively increase across the suburb. I think that is an approach. So it is a mapping study really that is missing on a residential basis. The district strategies pick up some fundamental infrastructure that is required for a suburb but there is not necessarily any focus purely on residential.³²⁹

- 3.291. The Belconnen and Molonglo Valley Community Councils also found the District Strategies lacking in terms of providing a truly forward-thinking plan for the future of their relevant Districts.
- 3.292. Ryan Hemsley thought that the District Strategies were good at capturing what he called the ‘negative space’ around the District – why people like the District. However, in terms of the gaps in the district that needed to be filled in, he found it less convincing. Despite the District Strategy painting a ‘rosy picture’ of the future of the Molonglo Group Centre, he argued that what is required in the plan is how the issue of developing ‘viable retail precincts in our district’ will be resolved.³³⁰
- 3.293. Another particular issue he identified with the District Strategy is despite forecasts showing the Molonglo Valley district’s population increasing by tens of thousands, the ‘provision or the planned provision of commercial, community, retail and entertainment facilities has not increased to match that increase in population’.³³¹
- 3.294. He stated to the Committee that Molonglo Valley Community forum has attempted to resolve this by advocating for the Molonglo group centre to be upgraded to a town centre within the ACT retail hierarchy, but indicated they received resistance from the ACT Government:

We have met with the National Capital Authority. In the National Capital Plan—in, I think, figure 2 or figure 10—they identify where the town centres are across the ACT. Those are the primary commercial hubs for those districts. Molonglo is now rapidly approaching, in the long term, parity with Canberra’s other districts that have town centres, whether that is Woden, Gungahlin, Tuggeranong or what have you. So we met with the NCA to say, “Is this something that you would consider? Are you the barrier to any change which would see Molonglo given its own town centre?” and they said, “No. We would happily consider a draft amendment to the National Capital Plan to give effect to this change.”

We do not know why we are meeting such resistance from the ACT Government and why we cannot get a town centre in the Molonglo Valley and make sure that our future residents do not have to rely on the neighbouring Belconnen and Woden town centres. They have their own genuine community hubs—the kind

³²⁹ Mr Rob Henry, Australian Institute of Architects ACT Chapter, *Committee Hansard*, 7 December 2023, p 116.

³³⁰ Mr Ryan Hemsley, Convenor, *Molonglo Valley Community Forum*, *Committee Hansard*, 6 December 2023, p 75.

³³¹ Mr Ryan Hemsley, Convenor, *Molonglo Valley Community Forum*, *Committee Hansard*, 6 December 2023, pp 75–76.

that is articulated in the district strategy—but, based on previous experience, we are not confident they will actually be delivered.³³²

- 3.295. He later expressed his concerns to the Committee that if the group centre is not upgraded ahead of time to a town centre:

Yes. The town centre is identified as a long-term ambition, which is bananas to us. We do not quite understand how they intend to retroactively unscramble the egg if it is built as a group centre over 20 years, and then they might decide to put an extra 25,000 people on the western edge or what have you. How are you then going to retrofit those facilities in an already established area? It is difficult. Unlike a lot of Canberra's legacy town centres, there are not going to be a huge number of large open-air car parks that you could turn into those facilities. We are in a constrained environment abutting areas of national environmental significance.

If we are going to have a Molonglo with between 70,000 and 86,000 people, we need to do the planning for those facilities now rather than retrospectively after the rules have been set, the buildings have been built and there is no more space to put anything without demolishing huge sections of what has been built.³³³

Committee comment

- 3.296. The Committee acknowledges that since the public hearing, the ACT Government has made moves towards reclassifying Molonglo Valley as a town centre.³³⁴
- 3.297. Lachlan Butler was also concerned about some of the elements which the Belconnen Community Council felt was lacking in the District Strategy, one of them being a primary school in the Belconnen town centre.³³⁵
- 3.298. The Committee notes that this is a concern that has been raised previously by Belconnen Community Council and Greater Canberra as part of other Assembly Committee hearings.³³⁶ The Government at the time responded that there was no plan for a new school in Belconnen because there is existing capacity in other schools in the area.³³⁷
- 3.299. The Belconnen District Strategy only specifies Strathnairn and Ginninderry as a potential site for schools in the short-term and longer term respectively, otherwise, the Strategy only makes the following general statement about providing more schools:

Analysis, which has considered the growth of the population based on the potential housing demand and the existing provision of facilities in the district, has

³³² Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 76.

³³³ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 76.

³³⁴ Mr Chris Steel MLA, Minister for Planning, Media release, [Molonglo to become the next town centre for the ACT - Chief Minister, Treasury and Economic Development Directorate](#) (accessed 27 February 2024).

³³⁵ Mr Lachlan Butler, Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2023, p 77.

³³⁶ See, for example: Mr Lachlan Butler, Chair Belconnen Community Council, Select Committee on Estimates 2023-2024, *Committee Hansard*, 17 July 2023, pp 49–50; Greater Canberra, *Submission 14*, Inquiry into the Future of School Infrastructure in the ACT, Standing Committee on Education and Community Inclusion, p 1.

³³⁷ Ms Yvette Berry MLA, Minister for Education, Select Committee on estimates 2023-2024, *Committee Hansard*, 19 July 2023, p 280.

indicated that further investigation will be needed into the demand and potential for new or expanded facilities including:

→ schools (particularly primary schools)...³³⁸

- 3.300. The Committee notes that the Select Committee on Estimates 2023-2024 recommended that the ACT Government plan a school for Belconnen Town centre to meet current and future needs of that population.³³⁹
- 3.301. The Government in response noted the recommendation and stated that the Government is monitoring population and enrolment growth in the region and planning for new and expanded schools where required to respond to future demand.³⁴⁰
- 3.302. Lachlan Butler in general felt that the District Strategies shared the same issues as the Molonglo Valley District Strategy:

...The Belconnen District Strategy has a lot of the same issues that the one for Molonglo Valley has, in that I read it and I saw a lot of “to consider”, “to investigate”, “to look into” and “to review”. Sixty to seventy thousand people are moving into the district and, to increase the necessary infrastructure, services and amenities, we just have “to consider”, “to investigate”, “to look into” and “to review”.³⁴¹

Committee comment

- 3.303. The Committee considers there are specific future planning considerations in the Belconnen district that merit reconsideration in the relevant District Strategy.

Recommendation 18

The Committee recommends that the Territory Planning Authority work with the Education Directorate to determine the need for a school in the Belconnen Town Centre.

Variation 369 and living infrastructure requirements

- 3.304. On the EPSDD website, the living infrastructure requirements are said to be incorporated into the Territory Plan in the following manner:

Part E1 Residential Zones Policy – Section 4

requirements that a sufficient planting area and canopy trees are provided

³³⁸ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Belconnen District Strategy](#)’, p 38.

³³⁹ Select Committee on Estimates 2023-2024, *Report on Inquiry into Appropriation Bill 2023-2024 and Appropriation (Office of the Legislative Assembly) Bill 2023-2024*, August 2023, p 114.

³⁴⁰ ACT Government, *Select Committee on Estimates 2023-2024: Inquiry into the Appropriation Bill 2023-24 and Appropriation (Office of the Legislative Assembly) Bill 2023-2024 – Government Response*, August 2023, p 44.

³⁴¹ Mr Lachlan Butler, Chair, Belconnen Community Council, *Committee Hansard*, 6 December 2023, p 77.

Roofed and hard surfaces are limited to reduce urban heat island effects

Minimised stormwater run-off

A requirement to maintain ecosystem services

Part E1 Residential Zones Policy – Section 5

All types of residential development proposals in all residential zones will be required to meet the mandatory development controls relating to site coverage limits

When the interim Territory Plan takes effect, there will be no exceptions for mandatory living infrastructure requirements for blocks where the original Crown lease was granted on or after 1 January 2020. This is also the case for estate development plans approved on or after 1 January 2020.

Part E2 Commercial Zones Policy and Part E4 Community Facility Zones Policy – Section 4

Requirements for urban heat island effects to be reduced

Minimised stormwater run-off

Ecosystem services must be maintained through the provision of planting area and canopy trees

Requirements for deep soil zones are provided on site to support healthy tree growth and provide adequate room for canopy trees.

Territory Plan – Part G Dictionary

An amendment to the wording for the definition of ‘site coverage’ This is to clarify what structures are included or not.

Zones Planning Technical Specifications

No change to the planting area and tree planting area.

Commercial and Community Facility Zones Specifications

New requirements being introduced for tree canopy cover, reducing urban heat, protection from heat (early childhood education and care, educational establishment, residential care accommodation and retirement village)

Other Specifications – Subdivision specifications

New requirements being introduced for tree canopy cover, reducing urban heat (cool paving) and protection from heat (playgrounds and public seating)³⁴²

³⁴² ACT Government Environment, Planning, and Sustainable Development Directorate, [The Territory Plan](#), (accessed 18 January 2024).

3.305. Mr Tim Field, observed to the Committee, when discussing where in the new system the provisions of Draft Variation 369 and the living infrastructure are embedded in the new system, that ‘There is nothing in the Act that says the technical specifications have to be looked at. They are interesting guides, by they do not drive decision-making’.³⁴³

3.306. This was further detailed in his expression of interest to appear before the Committee, where he argued that DV39 Living infrastructure or solar access requirements for multi-unit developments have not carried across from DV369 to the new Territory Plan, and instead rely on the Housing Design Guide and technical specifications that are not supported by the Territory Plan or Planning Act:³⁴⁴

The Housing Design Guide has to be considered, but it is also qualitative; it does not have to be complied with. There is a world of difference between ‘has to be considered’ and ‘has to be complied with’

- The Residential Zones Technical Specifications incorporate numeric quantifiable measures, but there is nothing in the new Planning Act that says they have to even be considered.

- The Housing Design Guide and Technical Specifications are supporting documents, and cannot operate as a set of rules.³⁴⁵

3.307. Concerned that it could be ignored by developers enticed by financial incentives to maximise the number of dwellings, he argues that Living Infrastructure and solar access requirements for RZ1 and RZ2 multi-unit developments should be mandatory specifications, like those for single dwelling developments.³⁴⁶

3.308. This was supported by Sue Tongue, who wrote:

Variation 369 and the living infrastructure targets are not “embedded” in the Plan in a meaningful way. They are essentially considerations to be taken into account when undertaking discretionary decision making and are unenforceable under the current framework.³⁴⁷

3.309. The Inner South Canberra Community Council also pushed for living infrastructure requirements to be mandatory:

The ISCCC is particularly concerned with the lack of mandatory controls at a time when it is imperative that our city responds appropriately to climate change. The Government has dropped V369 of the current Plan, and has not replaced it. The Housing Design Guide and Technical Specifications are supporting documents and cannot be used to impose requirements in this area; to do this is not supported by the Planning Act or Territory Plan.

³⁴³ Mr Tim Field, *Committee Hansard*, 6 December 2023, p 30.

³⁴⁴ Mr Tim Field, *Exhibit 3*, p 1.

³⁴⁵ Mr Tim Field, *Exhibit 3*, p 2.

³⁴⁶ Mr Tim Field, *Exhibit 3*, pp 1–2.

³⁴⁷ Ms Sue Tongue, *Submission 22*, p 2.

Increased allowable densities increase financial incentives to build the number of dwellings up to the allowed maximum. Living Infrastructure and solar access will become residual items.

These items are too important to be left to chance; as a priority they should be covered by mandatory specifications, mirroring the approach for single dwelling developments. Specifically, provisions for solar access in section 14 and planting area in section 18 of the Residential Zones Technical Specifications should be made mandatory Assessment Requirements.³⁴⁸

- 3.310. Dickson Residents Group,³⁴⁹ and the Griffith Narrabundah Community Association,³⁵⁰ also raised concerns with living infrastructure targets not being embedded in the Territory Plan.
- 3.311. Ms Stephanie Booker expressed the same concerns, noting that the Housing Design Guide does not explicitly apply to single dwellings and secondary residences, and that RZ1, which is more than 80 percent of the existing residential zone, consists of single dwellings. She also, like Mr Field, identified that the technical specifications ‘may or may not be considered by decision makers when assessing a development application, and are not a consideration for decision makers in section 186 of the *Planning Act 2023*’, and that there are minimal DV 369 equivalent settings in assessment requirements.³⁵¹ She argued in her submission that ‘this essentially means that criteria – the qualitative considerations in the Territory Plan – do not apply to RZ1. It is unclear why this is the case, and what decision makers will take into account when determining whether assessable outcomes are met’.³⁵²
- 3.312. She ultimately questioned what would guide living infrastructure standards:
- ...There are relevant assessable outcomes in the Territory Plan, but what will decision makers take into consideration when making this assessment, given the Housing Design Guide specifically does not apply and technical specifications may not be applied? What is the mandatory, relevant guidance, to satisfy assessable outcomes (other than site footprint measures in the assessment requirements? There is none.³⁵³

Committee comment

- 3.313. The Committee is of the view that, to ensure the living infrastructure requirements are not ignored or given minimal deference in new developments, the living infrastructure requirements should be more firmly embedded into the Territory Plan to ensure they are always considered in planning decision making.

³⁴⁸ Inner South Canberra Community Council, *Exhibit 5*, p 2.

³⁴⁹ Dickson Residents group, *Submission 7*, p 1.

³⁵⁰ Griffith Narrabundah Community Association, *Exhibit 4*, p 1.

³⁵¹ Ms Stephanie Booker, *Submission 25*, p 3.

³⁵² Ms Stephanie Booker, *Submission 25*, p 3.

³⁵³ Ms Stephanie Booker, *Submission 25*, p 3.

Recommendation 19

The Committee recommends that the Territory Plan should be amended to more firmly embed living infrastructure requirements.

Implementation of living infrastructure

- 3.314. The Office of the Commissioner for Sustainability and the Environment (OCSE) raised concerns with the Territory Plan's living infrastructure requirements regarding their implementation:

I think our observation is something that could probably be applied across a lot of areas, and that is that a lot of the policy intent in the Territory Plan seems good, and the stated aims, and so on, do meet high standards in terms of sustainability; our concerns are more about how that actually happens in terms of implementation. Reading all the different outcomes that the Territory Plan is going for, I think it is quite apparent that it is not going to be possible to achieve all of those for every development, because some of them are mutually incompatible.

I think our concerns are more about how those living infrastructure targets get implemented at the block level and the suburb level, and about how they are weighed up with other things. We are aware, for example, that there are restrictions around trees in new suburbs where there is not enough space in reservation strips for them: there are conflicting uses with utilities; there is the block size to house size ratio, which limits the amount of green infrastructure that can go around those houses. The policy intent is there, but I think it is how it is actually turned out on the ground across the whole suburb-level that is going to be difficult to figure out still, and we are still not sure how the implementation is going to work in terms of figuring out those sorts of city-wide targets.³⁵⁴

- 3.315. Ms Victoria Herbert, Acting Assistant Director at the Office of the Commissioner for Sustainability and the Environment, elaborated that they perceive there to be a 'lack of transparency around the assessment process for the development applications', leading to uncertainty around how the hierarchy of outcomes will be assessed and how potentially competing priorities will be resolved. She also stated that the Office's other concern is whether there is appropriate resourcing for the implementation, and whether assessors will have the relevant skills, knowledge and capacity to ensure development applications are assessed properly and environmental outcomes are met.³⁵⁵
- 3.316. The concerns with the implementation of the living infrastructure requirements were expressed by other witnesses too.

³⁵⁴ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 98.

³⁵⁵ Ms Victoria Herbert, Acting Assistant Director, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, pp 98–99.

- 3.317. For example, the Property Council of Australia had concerns around impacts on density from the living infrastructure requirements:

Variation 369 appears to be incorporated into the Interim Territory Plan through reducing site coverage on RZ3, RZ4 and RZ5. As discussed above the Property Council believes that this is an oversight as there are ways of achieving living infrastructure while not reducing density. For example, if the Interim Territory Plan will take the position that site coverage should be reduced then they should consider improvements in height to provide the same Gross Floor Area.³⁵⁶

- 3.318. Development Manager Imogen Featherstone also echoed these concerns during the public hearing, outlining how the living infrastructure requirements under DV369 impacted on their ability to deliver affordable compact housing:

Our biggest concern probably is around delivering that affordable compact product. The only turnkey product we deliver at Ginninderry is our affordable flexi-living series, which are stand-alone terrace housing. It is like any other house, there is no strata title. So for our Alto 2 design, we did analysis in 2019 and we applied DV369 to that terrace product. The block area was originally 114 square metres. We increased it to 151 square metres to accommodate DV369. The Alto 2 house and land package to turnkey-ready was sold in 2019 for \$447,340. Applying the additional required 37 square metres to that block, at \$950 per square metre, increased the house and land to \$482,490, which is an additional \$35,150 for that flexi-living package....³⁵⁷

- 3.319. Ms Featherstone indicated that the government should look at implementing a terrace housing code as both the new and old Territory Plan do not support single-residential terrace housing, and that there should be a Ginninderry site-specific policy in the Belconnen District policy, to support compact housing typologies.³⁵⁸

- 3.320. Michael Hopkins also indicated the living infrastructure requirements were one of a number of factors that have led to concerns about the possible development yields in RZ2 zones.³⁵⁹

Environment and sustainability

- 3.321. The Territory Plan and associated documents contain a range of information, requirements and other material relating to environmental protection and sustainability. While by its very nature, all development includes risks of at least some level of environmental degradation and use of non-renewable resources, many submitters and witnesses to this inquiry were of the view that more could be done to bolster the role of the Territory Plan in protecting the ACT environment and boosting efforts at sustainability.

³⁵⁶ Property Council of Australia, *Exhibit 12*, p 2.

³⁵⁷ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 58.

³⁵⁸ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Exhibit 35*, p 1.

³⁵⁹ Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, pp 137, 138.

Improving biodiversity and conservation

- 3.322. In terms of the role of the Territory Plan in improving biodiversity outcomes, the Office of the Commissioner for Sustainability and the Environment (OCSE) noted that:

Despite its clearly articulated intentions to improve biodiversity outcomes, it remains to be seen whether the new Territory Plan will be implemented in a way which rigorously safeguards the environment. There remains a large degree of subjectivity in how the requirements of the new planning strategy are applied in practice.³⁶⁰

- 3.323. According to the OCSE, public complaints received have shown that ‘it is entirely possible to follow legal requirements’ and ‘still have poor outcomes for the environment and sustainability’. The OCSE’s submission argued that ‘some elements of the Territory Plan designed to protect the environment are also inadequate because there are other legislative mechanisms that undermine them’.³⁶¹

- 3.324. The ACT Climate Change Council Member, Dr Paul Bannister, noted that the language of the Territory Plan ‘talks about, as a sort of principle, that you should avoid degradation of biodiversity’ which in his view is essentially saying ‘the same or worse’. He noted that this does not align with the design guides, ‘which talk about measures that would improve biodiversity’.³⁶²

- 3.325. Overall, the OCSE noted that:

I think if you look at the way that development has happened historically in the ACT, in spite of good intentions, we have still seen a long-term, broad scale degradation of the natural environment—loss of native habitats, more native species added to the threatened species list. We do not really see anything in the new Territory Plan that is going to change that, I guess.³⁶³

Conservation areas

- 3.326. Clearly identifying and protecting conservation areas emerged as an important part of improving biodiversity and conservation efforts. Part B of the Territory Plan includes a map, which includes overlays identifying land where additional considerations apply. One of these overlays relates to public land, which includes the following categories:

- wilderness areas;
- national parks;
- nature reserves; and

³⁶⁰ Office of the Commissioner for Sustainability and the Environment, *Submission 29*, p 1.

³⁶¹ Office of the Commissioner for Sustainability and the Environment, *Submission 29*, p 1.

³⁶² Dr Paul Bannister, ACT Climate Change Council, *Committee Hansard*, 7 December 2023, p 107.

³⁶³ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 99.

- special purpose reserves.³⁶⁴
- 3.327. In addition to this map overlay, as discussed in Chapter 2, the Biodiversity Sensitive Urban Design (BSUD) Guide provides detailed guidance on:
- maintaining and enhancing nature;
 - connecting and extending nature;
 - minimising threats to protecting nature; and
 - connecting people to nature.³⁶⁵
- 3.328. The Conservation Council of the ACT characterised the BSUD Guide as good, however it noted that its applicability is limited and that enforcement of its requirement is necessary.³⁶⁶
- 3.329. Similarly, Ms Sarah Sharp, Vice President of the Friends of Grasslands noted that the BSUD Guide sounds ‘fantastic’ and contains ‘really good intentions’, but that its status should be absolutely clear.³⁶⁷
- 3.330. More generally, the Friends of Grasslands submitted that ‘much more rigorous integration’ of planning and environmental protection is required if other critical issues are to be met, ‘including protection of threatened species and communities, climate change mitigation, human well-being and functional roles of water and air quality’.³⁶⁸
- 3.331. According to Friends of Grasslands:
- Planning to protect areas of heritage and biodiversity values prior to development will provide clarity as to what can be developed, where and how. Ultimately this will reduce administration and provide much greater transparency – and trust – in the planning processes and outcomes.³⁶⁹
- 3.332. Ms Sharp expressed concerns about the role of the BSUD Guide in protecting the environment. The first concern is the onus falling on developers to identify areas for protection on their land. According to Ms Sharp, those areas should be identified under the lease system and protection provided through legislation prior to development, rather than allowing developers to decide through the design process.³⁷⁰
- 3.333. The second was in relation to the boundaries placed on the application of the BSUD Guide. Specifically:
- Reading through it, my understanding is that the areas in question need to be a hectare or more in size. What we have is that under the legislation, both the commonwealth EPBC Act and the Nature Conservation Act, the size of threatened

³⁶⁴ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part B: Planning Principles and Strategic Links](#)’, p 1.

³⁶⁵ ACT Government, *Territory Plan 2023*, NI2023-540, ‘[Part A: Administration and Governance](#)’, p 7.

³⁶⁶ Conservation Council ACT Region, *Submission 21*, pp 4–5.

³⁶⁷ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 91.

³⁶⁸ Friends of Grasslands, *Submission 24*, p 1.

³⁶⁹ Friends of Grasslands, *Submission 24*, p 1.

³⁷⁰ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 91.

communities, to define them as a threatened community, is much smaller. For natural temperate grassland it is 0.04 of a hectare, which is just 20 by 20 metres. Woodland is 0.1 of a hectare, which is the equivalent of 20 by 50 metres, so it is one-tenth or one-fortieth of the size that would be considered under these guidelines.³⁷¹

- 3.334. Friends of Grasslands submitted that while the BSUD Guide ‘advocates recognising biodiversity as an opportunity’, it does not go far enough:

The identification of areas greater than 1 ha required for consideration of biodiversity values is too large to be compatible with protection of habitat of most threatened species, the critically endangered communities, or other rare or vegetation communities and habitat that is poorly represented in nature reserves.³⁷²

- 3.335. According to Ms Sharp, a better approach would be to clearly define the areas for protection ‘up-front, right now’. Ms Sharp elaborated:

We have got various things under various names. There is the blue-green network. There are the conservation areas. Neither of those are really well defined as to what they are, so intuiting what is in them or trying to interpret what is in the blue-green is everything from a highly recreational area right through to areas that are of high conservation value.³⁷³

- 3.336. Friends of Grassland elaborated on some aspects it believed lack clarity:

There is a significant lack of clarity about how the two new defined categories, the ‘blue-green network’ and ‘conservation areas’, will be protected, as mandated:

- **The blue-green network** does not distinguish between highly modified mostly recreational open space and areas of conservation value.
- **Conservation Areas** are identified as a category on the district maps, but are only applied to areas that are designated nature reserves. The term is neither defined in the glossaries nor identified as a land use category or overlay.
- **Key definitions** are omitted in the glossary including, but not limited to: conservation area; biodiversity conservation network; future urban area.³⁷⁴

- 3.337. Ms Sharp told the Committee that identifying areas for protection up-front and creating clear criteria against them will make the process ‘very, very transparent’ so that all stakeholders know what areas will be retained as ‘some form of reserve protection’.³⁷⁵

³⁷¹ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 92.

³⁷² Friends of Grasslands, *Submission 24*, p 2.

³⁷³ Ms Sarah Sharp, Vice-President, Friends of Grasslands, *Committee Hansard*, 7 December 2023, p 92.

³⁷⁴ Friends of Grasslands, *Submission 24*, p. 2.

³⁷⁵ Ms Sarah Sharp, Vice-President, Friends of Grassland, *Committee Hansard*, 7 December 2023, p 92.

- 3.338. Friends of Grasslands argued for a range of Territory Plan documents to be updated to better reflect environmental protection and provide more clarity around where developments could take place, and what environmental criteria developments need to meet. It called for a definition of ‘conservation area’, and for the revision of the criteria in the BSUD Guide, and a reduction of the size of developments requiring its consideration down to levels that are compliant with other legislations, including the EPBC Act.³⁷⁶

Biodiversity Network

- 3.339. Another aspect of conservation that was raised with the Committee is the perceived piecemeal management of conservation areas under the planning system.
- 3.340. The Conservation Council argued for the implementation of its Biodiversity Network discussion paper as a means of better managing conservation activities within planning in the ACT.³⁷⁷ The Conservation Council told the Committee that:

To facilitate adequate protection of natural resources, a strategic system that facilitates best practice conservation on and off reserves is required, to ensure that all remaining threatened species and communities in the ACT are properly managed and protected in perpetuity.³⁷⁸

- 3.341. The Biodiversity Network discussion papers, published in 2022, states that the Biodiversity Network would:

...be designed to protect remnants of natural value that are not reserved, whereby these remnants, together with those in reserve, will be unified into a single management and (or) legal framework for protection and implementation of ecological management.³⁷⁹

- 3.342. This discussion paper outlined the nature of the biodiversity and conservation issues extant in the ACT:

- The reserve system does not protect all conservation areas of importance;
- Areas of conservation value outside reserves are being lost through expansion of the city and associated infrastructure;
- Natural resources outside reserves are not consistently managed for conservation values; and
- Areas of biodiversity are fragmented across the ACT.³⁸⁰

³⁷⁶ Friends of Grasslands, *Submission 24*, p 2.

³⁷⁷ Conservation Council ACT Region, *Submission 21*, p 8.

³⁷⁸ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 1.

³⁷⁹ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 2.

³⁸⁰ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 6.

3.343. According to the discussion paper:

Incorporating the Biodiversity Network on rural and urban leases can achieve major conservation gains for protection of woodlands, grasslands, and other [matter of national environmental significance] through cooperative management agreements facilitated by enhanced support including the provision of resources and advice. The establishment of the Biodiversity Network to protect Conservation Areas across all tenures will ensure a certainty of management and protection over the long term.³⁸¹

3.344. Ms Sharp noted that in taking the wider view of conservation areas in the ACT, we would not be 'starting from scratch'. According to Ms Sharp:

There is a massive amount of data out there about sites. There is government survey work that has been done. The community knows a lot of sites. I provided something like a list of 50-odd sites that need to be considered. Details of them are there.³⁸²

3.345. Similarly, according to the Biodiversity Network discussion paper 'considerable survey data and mapping already exists'. Even where small remnants exist that are not currently mapped, 'considerable knowledge about many of these lies within the local community'.³⁸³

3.346. The Biodiversity Network discussion paper notes that many of the sites identified are utilised for purposes other than conservation, and that these existing land uses can remain if such use does not compromise biodiversity values. Further, where degradation has occurred, opportunities exist for regeneration focussed on improving connectivity across the landscape.³⁸⁴

3.347. The central purpose of the biodiversity network would be to 'formalise management for biodiversity outcomes on multiple types of public and leased land'. It would achieve this via a 'combination of protection, restoration and reconnection compatible with other land management objectives', and would achieve more effective protection of key biodiversity areas in perpetuity, conserve important ecosystems and wildlife corridors, support threatened species and the recovery of their populations, enhance biodiversity resilience, and reconnect fragmented ecosystems that exist within developed landscapes in the ACT.³⁸⁵

3.348. The formalised management would be realised through the designation of the remnant ecosystems being identified in legislation as conservation areas through the Nature Conservation Act and the Territory Plan. This in turn requires a liaison team to coordinate

³⁸¹ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 2.

³⁸² Ms Sarah Sharp, Vice-President, Friends of Grassland, *Committee Hansard*, 7 December 2023, p 93.

³⁸³ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 13-14.

³⁸⁴ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 14.

³⁸⁵ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 12.

the network and promote the sharing of knowledge, as well as a public education campaign to ‘ensure community and lessees are supportive of the scheme’, and emphasise the network’s compatibility with existing land uses.³⁸⁶

Government response

3.349. In terms of ensuring conservation efforts and the preservation of biodiversity through the Territory Plan, Mr Ponton noted ‘in the Territory Plan there are requirements around consideration of biodiversity values’, and that ‘there are further requirements’ in the BSUD Guide ‘if you hit the one hectare trigger’.³⁸⁷

3.350. Mr Ponton elaborated, noting that sites under one hectare are still under consideration for the environmental values:

The biodiversity sensitive urban design guide, which has that one hectare trigger, is for larger projects so that it picks up new estates and makes sure a new estate considers all of those connections. That does not mean we are not looking at those smaller sites in terms of making sure we understand the values, which will then be fed into the strategic planning work, that could then result in changes to the Territory Plan.³⁸⁸

3.351. Further, Mr Ponton told the Committee that further efforts are currently under way to map the environmentally sensitive and important areas in the ACT. He raised the Connecting Nature Connecting People initiative as well as the work undertaken by the Environment, Heritage and Water team within EPSDD as both contributing to identify and map the areas which contain threatened communities.³⁸⁹

3.352. According to Mr Ponton, this mapping work ‘was very useful’ and is being fed into the district strategy work underway. Mr Ponton stated that this work is underway and ‘will continue to be refined and improved’. In terms of translating this into formally managed reserves, Mr Ponton told the Committee that:

It then will assist in further work that is identified through the district strategies, which will help us then identify if further areas need to be included into managed reserves, because up until this point we did not have all the data we needed to make those decisions. The mapping is the first step. Then we have identified certain areas that we know are of particular potential value where we can do further work, and then that might result in a recommendation to government of including further areas into reserves.³⁹⁰

³⁸⁶ Conservation Council ACT Region & Friends of Grasslands, [Building a Biodiversity Network Across the ACT](#), Discussion Paper, December 2022, p 16.

³⁸⁷ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 176.

³⁸⁸ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 175.

³⁸⁹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 174.

³⁹⁰ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, pp 174–175.

Committee comment

- 3.353. The Committee heard evidence regarding the lack of clarity around the protection and conservation of the environmentally sensitive areas in the ACT. While it is clear that the various Territory Plan documents, particularly the BSUD Guide and the incorporation of living infrastructure requirements are a step in the right direction, in the Committee's view more clarity is required.
- 3.354. Greater certainty around this protection is a valuable mechanism that could be explored by government. However, achieving this certainty is not a minor or technical change that can be easily implemented. The changes required are, in aggregate, a major shift in policy direction and would require the identification of areas of conservation value in the ACT Natural Resource Management Plan, the Territory Plan, and the various District Strategies.
- 3.355. The Committee heard further evidence that reserving and protecting areas of conservation value in key documents and legislation relating to the Territory Plan may also help to ensure that they are protected in a holistic way, rather than on a case-by-case or development-by-development manner.
- 3.356. In this regard, the Committee notes that a plan to do so already exists, in the Building a Biodiversity Network for the ACT discussion paper, produced by Friends of Grasslands and the Conservation Council. This plan provides a blueprint for the strategic management of both protected remnant conservation areas and other potentially significant conservation areas within the ACT, and could act as a positive starting point for efforts at protection of Canberra's natural environment.

Recommendation 20

The Committee recommends that the ACT Government, where practicable, ensure the protection of biodiversity and conservation areas in the Territory Plan using the framework outlined in the discussion paper *Building a Biodiversity Network Across the ACT*.

- 3.357. In the evidence put in this inquiry, there was also concern about the use of language in the various Territory Plan documents around biodiversity and conservation. The language used in the BSUD Guide around 'extending' and 'enhancing', as opposed to just limiting degradation as is the case in the Territory Plan itself, is clearly a cause of concern in the ACT community. In future iterations of the Territory Plan, consideration of whether this language around extending and enhancing biodiversity contained in the BSUD Guide should be extended to the Territory Plan, so that the environmental language in these two documents is consistent, is necessary.
- 3.358. The Committee is also cognisant of the inconsistencies identified between the requirement for application of the design principles contained in the BSUD Guide and other legislation, including the *Nature Conservation Act 2014* and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

- 3.359. Specifically, the application of the BSUD Guide to areas smaller than one hectare falls short of the requirements under these pieces of legislation. In the Committee's view, the BSUD Guide should be consistent with legislation designed to protect biodiversity, and as such the BSUD Guide should be reviewed with a view to establishing a consistent approach to conservation.

Recommendation 21

The Committee recommends that the ACT Government consider reviewing the Biodiversity Sensitive Urban Design Guide to examine whether it should apply to areas smaller than one hectare in line with the *Nature Conservation Act 2014* and the *Environment Protection and Biodiversity Conservation Act 1999*.

Solar fence requirements

- 3.360. Rules around the solar envelope for residential developments in the ACT have been in place since 2016, and were incorporated into the Residential Zones Technical Specifications.³⁹¹ These specifications are among the measures intended to allow for reasonable solar access for dwellings, private open space, and on adjoining residential blocks, and define the height of the solar fence on the northern boundaries of blocks in certain circumstances.³⁹²
- 3.361. According to Mr Tony Trobe, appearing in a private capacity, the solar fence requirements have had serious, unintended negative consequences for housing in Canberra. While Mr Trobe noted that the requirements were introduced with the best intentions, it has caused 'problems in terms of the relationship to boundaries'.³⁹³
- 3.362. Mr Trobe stated that:
- Prior to the introduction of the solar fence rule the rules for solar protection [in the ACT] were already probably some of the most comprehensive nationally, if not in the rest of the world.³⁹⁴
- 3.363. Since the introduction of the rules, Mr Trobe told the Committee that 'the angle of the solar fence has been decreasing', which has made it 'more difficult to achieve good solar outcomes' as dwellings have been pushed to the north side of blocks, 'at the expense of more open space on the south'.³⁹⁵
- 3.364. Mr Trobe elaborated on the issues caused by the solar fence, as developers seek to avoid the solar fence issue:

³⁹¹ See, for example: NI2016-410: *Planning and Development (Plan Variation No 346) Approval 2016*; NI2023-741: [Planning \(Residential Zones\) Technical Specifications 2023 \(No 2\)](#), p 15.

³⁹² NI2023-741: [Planning \(Residential Zones\) Technical Specifications 2023 \(No 2\)](#), p 15.

³⁹³ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 34.

³⁹⁴ Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p 5.

³⁹⁵ Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p 5.

The solar fence means that they have to push the house to the middle of the block, and they cannot do that, so the blocks have to be wider to make that work, and of course the yield does not come. The government does not like it because it does not get enough money, because the blocks are wider, and the infrastructure is slightly more expensive, so they say, “Let’s just turn all the blocks around.” So, forever, all the blocks in the new suburbs face the wrong way.³⁹⁶

- 3.365. According to Mr Trobe, the resulting houses ‘will forever be complete failures in regard to orientation for good solar access’ as ‘the large preponderance of all blocks’ are facing ‘the wrong way round with garages at the front’ and ‘permanently facing either east or west’. These blocks layouts ‘are completely counterintuitive’ to ‘anybody that understands any basic principles of passive solar design’.³⁹⁷ The figure provided below illustrates the results of the issue identified by Mr Trobe.



Figure 4: House orientations in Bonner, Casey and Coombes [Source: Mr Tony Trobe, Director, TT Architecture, Exhibit 32, p 6.]

Committee comment

- 3.366. If the current rules are leading to perverse planning and design outcomes that result in many residents living in homes with suboptimal solar access, this raises concerns about liveability and energy consumption due to the need for additional heating. As a result, the Committee sees a need for a review of the current specifications around the solar envelope and solar fence, with a view to maximising efficiency and reducing energy consumption.

³⁹⁶ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 34.

³⁹⁷ Mr Tony Trobe, Director, TT Architecture, *Exhibit 32*, p. 6.

Recommendation 22

The Committee recommends that the ACT Government review the solar fence requirements to ensure that solar efficiency is maximised so as to reduce energy consumption.

Living infrastructure

3.367. As discussed in Chapter 2, requirements around the prevalence of living infrastructure on blocks across several zones have been in place since 2022 in the ACT. These requirements were originally known as Variation 369 (referred to as DV369), and have been formalised in the various Territory Plan documents, appearing in the documents such as Housing Design Guide and the Biodiversity Sensitive Urban Design Guide, as well as a range of technical specifications.

3.368. For example, the *Residential Zones Specifications* sets minimum specifications in support of the following assessment outcome:

Sufficient planting area and canopy trees are provided, and roofed areas and surfaces limited, to reduce urban heat island effects, minimise stormwater run-off and maintain ecosystem services.³⁹⁸

3.369. To achieve this outcome in part, the *Residential Zones Specifications* sets out minimum planting areas that are to be included on blocks. For a large block with a single dwelling, 30 per cent of the block area must be a planting area, for a mid-sized block 20 percent, and compact blocks must have 15 per cent. Similarly, for RZ1 and RZ2 multi-unit housing, 35 per cent of the block must be planting area; in RZ3-RZ5 the proportion is 25 per cent.³⁹⁹

3.370. The Woden Valley Community Council considered these requirements being contained in the various notifiable instruments as being insufficient to ensure a good outcome, and that there should be 'statutory requirements' that ensure 'each property contributes to the tree canopy and more heat islands do not emerge'.⁴⁰⁰

3.371. Mr Ron Brent of the Dickson Residents Group linked compliance with the need for green space and access to sunlight to these matters not being listed as mandatory rules under the new planning system:

I would also note, given that the technical guidelines are no longer mandatory, things like overshadowing, which are an important part of creating light and amenable environment, will disappear. And if we cannot maintain some of those things under the existing system, because it is stacked against good design, I think it is going to be more problematic under the new system.⁴⁰¹

³⁹⁸ NI2023-741: [Planning \(Residential Zones\) Technical Specifications 2023 \(No 2\)](#), p 21.

³⁹⁹ NI2023-741: [Planning \(Residential Zones\) Technical Specifications 2023 \(No 2\)](#), p 21.

⁴⁰⁰ Woden Valley Community Council, *Exhibit 20*, p 4.

⁴⁰¹ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, p 18.

- 3.372. Mr Tim Field argued that part of the problem is the location of the living infrastructure within the Territory Plan. According to Mr Field, locating them in the technical specifications raised problems with enforceability. He stated that as there is ‘nothing in the Act that says the technical specifications have to be looked at’, and placing the living infrastructure provisions in the guides means ‘they do not drive decision-making’.⁴⁰²
- 3.373. Similarly, Ms Stephanie Booker noted that while living infrastructure requirements ‘are set out in assessment requirements’, there is nonetheless ‘little mandatory guidance for single dwellings that are not covered by the design guides’.⁴⁰³
- 3.374. Ms Booker was also concerned that there appears to be no mandatory, relevant guidance in terms of the majority of residential housing in the ACT in relation to living infrastructure. She questioned how meeting the 30 per cent tree canopy and permeable surface targets would be possible without the Housing Design Guide being applicable to single dwellings.⁴⁰⁴
- 3.375. According to Ms Imogen Featherstone, Development Manager (Planning) at Riverview Projects, the application of these requirements would also lead to difficulties in maintaining and enforcing green spaces on block. She raised Ginninderry as an example, noting that:
- ...you are getting people who are going to rip out the trees and the like because people do not want trees. We have to try and educate people on a daily basis about why they cannot have artificial turf, why they cannot have rocks in the front of their verge.⁴⁰⁵
- 3.376. Mr Jochen Zeil of the North Canberra Community Council, emphasised the importance of enforcing the living infrastructure requirements.⁴⁰⁶ Mr Elford echoed this perspective, and argued for a system of metrics to track performance within the planning system more generally.⁴⁰⁷ Ms Fiona Carrick of the Woden Valley Community Council provided an example that illustrates the need for metrics in relation to living infrastructure:
- The fundamental thing is that we will have trees. The developer will say, “I want to put my house there,” and then they can pay a canopy contribution charge and the tree could go in a green belt somewhere else. How often is that canopy contribution charge used? Is there a revenue budget for the tree unit to meet? Is there an incentive for them to approve the canopy contribution charge to meet their revenue budget?⁴⁰⁸
- 3.377. Mr Howard McLean, Convenor of Greater Canberra, noted that DV369 has resulted in greater public support for densification:

⁴⁰² Mr Tim Field, *Committee Hansard*, 6 December 2023, p 30.

⁴⁰³ Ms Stephanie Booker, *Submission 25*, p 4.

⁴⁰⁴ Ms Stephanie Booker, *Submission 25*, p 4.

⁴⁰⁵ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 60.

⁴⁰⁶ Mr Jochen Zeil, Chair, North Canberra Community Council, *Committee Hansard*, 6 December 2023, p 9.

⁴⁰⁷ Mr Peter Elford, Treasurer, Gungahlin Community Council, *Committee Hansard*, 6 December 2023, p 10.

⁴⁰⁸ Ms Fiona Carrick, Chair, Woden Community Council, *Committee Hansard*, 6 December 2023, p 11.

One of the most striking things about listening to the other witnesses here today was that a lot of witnesses, including from organisations which are, let's say, sceptical of development, had no objection to there being more townhouses, provided the green space and other planting restrictions were complied with.⁴⁰⁹

3.378. For example, Dr David Denham, of the Griffith Narrabundah Community Association noted his support for increased densification in older suburbs, via the recent RZ1 zoning changes in particular, providing that there is sufficient green space provided.⁴¹⁰

3.379. Ms Featherstone raised concerns about the potential cost implications of the living infrastructure requirements particularly in relation to transitional arrangements. She raised the example of people who had bought blocks and had housing designed that no longer meets the living infrastructure requirements following the introduction of the new planning system. According to Ms Featherstone:

Well, when people call us, we have to tell them that there is a new Territory Plan; they need to pay for a redesign of their blocks; and that while they bought a parcel of land, their dwelling will no longer be fit for the purpose they have proposed because it does not meet the current controls. Up until recently we did not know what those controls actually were. We did not know when and how it was going to take place because we were not sure of the date, and the date can change, subject to government approval. Our concern is that there might be some people who are caught out by that. We do not yet have the calls coming through, but we suspect that people are taking some time.⁴¹¹

3.380. Ms Featherstone provided an example that quantifies the cost increases in a specific development:

So for our Alto 2 design, we did analysis in 2019 and we applied DV369 to that terrace product. The block area was originally 114 square metres. We increased it to 151 square metres to accommodate DV369. The Alto 2 house and land package to turnkey-ready was sold in 2019 for \$447,340. Applying the additional required 37 square metres to that block, at \$950 per square metre, increased the house and land to \$482,490, which is an additional \$35,150 for that flexi-living package. In applying 2023 escalation in construction costs and land costs for that same turnkey product, the cost is projected at \$680,000.⁴¹²

3.381. While this cost increase is attributable to a range of factors, Ms Featherstone argued that 'any time you are going to put DV369 on any block, you have increased [the cost] plus all the other pressures' that the housing industry currently faces.⁴¹³

⁴⁰⁹ Mr Howard McLean, Convenor, Greater Canberra, *Committee Hansard*, 6 December 2023, p 65.

⁴¹⁰ Dr David Denham AM, President, Griffith Narrabundah Community Association, *Committee Hansard*, 6 December 2023, p 18.

⁴¹¹ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 57.

⁴¹² Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 58.

⁴¹³ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 61.

- 3.382. This also creates a discrepancy between new developments and older suburbs. According to Ms Featherstone:

I think our biggest difference from old Canberra, and those [new] suburbs, is that you have to consider the environment in every single development and greenfield development that you do. So in our instance, one third of that area is locked away in perpetuity for conservation outcomes.⁴¹⁴

- 3.383. Mr Tim Field noted concerns around the intersection between the perceived financial incentives for block consolidation in the Territory Plan and the living infrastructure requirements. According to Mr Field, there is ‘not enough rigor in the living infrastructure requirements’, as ‘all the financial incentives are pushing in a certain direction, which is to maximise the yield’.⁴¹⁵

- 3.384. Mr Field provided a specific example:

RZ2, which has not received much attention—the loading or whatever you call it; the number of dwellings per given block—has quietly been increased quite significantly. On a 1,000-square-metre block, you can now build three townhouses rather than two, which is a nice little earner for people who have been land banking. Again, that increases the pressure on anything to do with living infrastructure, where you have more driveways, more utility areas, decks and hard surfaces generally.⁴¹⁶

- 3.385. Mr Trobe was doubtful that, in the long-term, setting percentages of living infrastructure coverage would necessarily produce good outcomes. He stated that there is the potential for unintended consequences:

Basing it on a 40 per cent footprint or areas for planting is going to force houses to have two storeys. That is an issue if you are ageing in place. There are a lot of other issues that I do not think have been thought through in terms of what the outcomes will be. We will only find out after this has all been in place for years and years.⁴¹⁷

- 3.386. Ms Flannery also argued that setting hard limits around the percentage of site coverage devoted to green space will not by itself necessarily achieve good outcomes. She noted that in some cases ‘less green space on a block’ could ‘be a lot more beneficial’ and that ultimately ‘it really is a case-by-case situation’. She gave a specific example to illustrate this point:

⁴¹⁴ Ms Imogen Featherstone, Development Manager (Planning), Riverview Developments, *Committee Hansard*, 6 December 2023, p 60.

⁴¹⁵ Tim Field, *Committee Hansard*, 6 December 2023, p 29.

⁴¹⁶ Mr Tim Field, *Committee Hansard*, 6 December 2023, p 29.

⁴¹⁷ Mr Tony Trobe, Director, TT Architecture, *Committee Hansard*, 6 December 2023, p 30.

For example, with deep root zones, to be honest, if you actually had a green roof on a building or on the garage, in shallow soils, that potentially could be a lot more beneficial to the environment than a deep root zone or a met zone site.⁴¹⁸

- 3.387. Mr Kip Tanner noted that it is more useful to think about the issue of living infrastructure from a wider perspective:

...we are trying to achieve 30 per cent canopy cover across all of Canberra, but that keeps getting applied on a block-by-block basis as opposed to a city-wide basis. We need to be able to have an overview. We want to achieve 30 per cent across the city, and in our parks, on our road verges and things like that we can achieve more than 30 per cent. In our shopping precincts or in Fyshwick we probably cannot, because there are lots of big buildings that are taking up too much space, so it will not be 30 per cent on every single block; it will be across the city. Somebody with an overarching view like that would be useful.⁴¹⁹

- 3.388. The OCSE raised similar matters, noting that their concerns with the living infrastructure targets and the Territory Plan relate to how they are implemented 'at the block level and the suburb level' and 'how they are weighed up with other things'. The OCSE noted that:

We are aware, for example, that there are restrictions around trees in new suburbs where there is not enough space in reservation strips for them: there are conflicting uses with utilities; there is the block size to house size ratio, which limits the amount of green infrastructure that can go around those houses. The policy intent is there, but I think it is how it is actually turned out on the ground across the whole suburb-level that is going to be difficult to figure out still, and we are still not sure how the implementation is going to work in terms of figuring out those sorts of city-wide targets.⁴²⁰

Committee comment

- 3.389. The living infrastructure requirement set under Variation 369 and continued in the Territory Plan constitute a worthy goal, in the Committee's view. They make an important contribution to avoiding urban heat islands and climate change adaptation, as well as making up an important part of the ACT's efforts to combat climate change. In addition, they contribute to the liveability of our homes and suburbs.
- 3.390. Several issues emerged in relation to living infrastructure during this inquiry.
- 3.391. There appear to be genuine public concerns about the nature of the guidance in the various Territory Plan documents relating to living infrastructure and green space. Many witnesses to this inquiry were concerned that there is no longer a requirement for green space to be retained in new developments, and that this is now only guidance.

⁴¹⁸ Ms Cia Flannery, President, Australian Institute of Landscape Architects ACT, *Committee Hansard*, 6 December 2023, p 39.

⁴¹⁹ Mr Christopher (Kip) Tanner, Director, Planner & Environmental Engineer, Planit Strategic Pty Ltd, *Committee Hansard*, 6 December 2023, p 51.

⁴²⁰ Mrs Miranda Gardner, Director, Complaints and Investigations, Office of the Commissioner for Sustainability and the Environment, *Committee Hansard*, 7 December 2023, p 99.

- 3.392. Many community groups were concerned that, with densification, there is a need to monitor exactly how much living infrastructure is retained and incorporated into both densified existing urban areas and in new developments. Additionally, enforcement of the living infrastructure requirements has clearly emerged as a key concern for many submitters and witnesses to this inquiry.
- 3.393. Measuring and enforcing such matters is complex and difficult, especially under a newly established planning system. In the Committee's view, work should be commenced as soon as possible to, in the first instance develop means of measuring progress in relation to the various climate change adaptation outcomes contained in the Territory Plan.
- 3.394. One matter that arose in considering living infrastructure that also speaks to the wider implication of the planning system was enforcement. Specifically, the Committee notes the considerable community concern that was expressed in relation to the ability to enforce planning standards and compliance with the requirements in the Territory Plan. Much of this concern relates to the perceived subjective nature of the interpretation of the requirements given the move to an outcomes-based planning system and the discretion that is likely to be available to decision-makers charged with assessing development applications.
- 3.395. The Committee notes that some rules do exist within the new planning system, and that in order for these rules to be effective, sufficient resources are required to ensure they are enforced. Some of the evidence discussed in this section raise an important issue: ensuring enforcement of the specific requirements around living infrastructure is a complex task involving regular, and in many cases post-development, inspection.
- 3.396. Additionally, this enforcement of planning standards and environmental protection, including living infrastructure, will be an important aspect in public support for the new planning system, as it will assist the community to see that rules exist, that the rules form an important part of the assessment process, and that they are ultimately enforced.
- 3.397. As such, the Committee sees a need for all relevant agencies to be adequately resourced with the staff required to ensure that planning standards and environmental protections are effectively enforced.

Recommendation 23

The Committee recommends that the ACT Government provide sufficient resources to relevant directorates and authorities to enforce planning standards and environmental protection to ensure developments are built in line with development application approvals and that tree protection, sediment, construction and other development standards are being met.

- 3.398. The Committee heard generally that block-by-block development, and the consideration of each development application on its own merits, may lead to a situation where the bigger picture in terms of including living infrastructure and green spaces is lost. It is important that, in the process of development, Canberra's green spaces and environmental amenity

are not lost. To achieve this, government needs to play a central role in ensuring that the living infrastructure targets are effectively implemented even in areas that are subject to densification.

Recommendation 24

The Committee recommends that the ACT Government take steps to ensure there are opportunities for ample green space in areas subject to densification.

Rural land

- 3.399. The role of rural and farmland within the Territory Plan was raised with the Committee during this inquiry.
- 3.400. The ACT Rural Landholders Association of Farmers (the Association) noted that farmers ‘are stewards for around 15 per cent’ of land in the ACT, and that these lands ‘provide benefits such as the conservation of nature, food and fibre, cultural landscape setting, tourism, management of natural resources, and protection from fire, flood and poor air quality’.⁴²¹
- 3.401. According to the Association, the Territory Plan has ‘failed to acknowledge rural land’, increased red tape, and contradicts ‘the outcomes of the agriculture strategy’.⁴²² While the Association acknowledged that the main focus of the District Strategies is on urban growth, ‘this does not mean that farmland and food should be ignored’.⁴²³
- 3.402. Mr McGrath-Weber told the Committee that the place of agriculture within the planning system, and vice versa, needed to be strengthened:

Unfortunately, with the food strategy, with the draft that was released for comment, there was no mention of planning whatsoever, which is actually the key element and the key thing. If you want there to be food production in the ACT, you want that agritourism, you want that wealth of getting people to connect with Canberra and all our producers and what we do then it needs clear links to planning.⁴²⁴

- 3.403. In relation to leasing of rural land, Mr Frederick McGrath-Weber, President of the Association, noted that in the ACT farmers face different condition to other ACT residents:

Long-term leases need to be across the board. Currently, there are only 23 short-term leases in the ACT, all of which are in broadacre areas. I think that is quite unequitable. I think everything should just be brought in line. Why can’t those people just have the same rights as the rest of the ACT? If you own a residential house in the ACT or if you have a commercial block in the ACT, you

⁴²¹ ACT Rural Landholders Association of Farmers, *Exhibit 43*, p 1.

⁴²² ACT Rural Landholders Association of Farmers, *Exhibit 43*, p 1.

⁴²³ ACT Rural Landholders Association of Farmers, *Exhibit 43*, p 4.

⁴²⁴ Mr Frederick McGrath-Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 6 December 2023, p 53.

have a 99-year lease. But many farmers in the ACT have a short-term lease, which does not even give you the luxury of a 30-year mortgage.⁴²⁵

- 3.404. In general, Mr McGrath-Weber noted that most leases for farmland in the ACT run for 20 or 25 years. Mr McGrath-Weber raised his own area as an example:

With blocks in our areas, because of that broadacre zoning and that Eastern Broadacre Strategic Assessment and everything going on, we are now only offered a short term lease or 20 or 25 years, which isn't even the same as the lease we had previously, let alone equitable to the rest of ACT residences. That is just one example of the inbuilt inequitable system that the zoning and the Territory Plan really need to address in order to really get the best outcomes for everyone.⁴²⁶

- 3.405. In addition to the lease issue, Mr McGrath-Weber raised the importance of zoning:

Broadacre zoning, for example, enables you to do the most creative things with your farm; however, you can also have a petrol station or a transport depot and different things like that. So there is competing land use. Also, most broadacre areas are short term leases, which gives you next to no security, both from the bank and the government.⁴²⁷

Committee comment

- 3.406. The Committee notes the longstanding issues associated with resolving the future planning of the Eastern Broadacre area which are impacting on the sustainability of agricultural and environmental outcomes for agricultural operators in the area.
- 3.407. The East Canberra District Strategy identifies areas of land within the Majura Valley for employment uses. At the same time the long-standing nature of land for agricultural purposes, especially in the Majura Valley, needs to be incorporated into future planning. Farming and other agricultural purposes provides a use of the land that generates food, manages land of ecological and environmental value while protecting the rural and 'bush capital' setting of Canberra – at limited cost to the ACT.
- 3.408. The East Canberra District Strategy recognises that the Eastern Broadacre Strategic Assessment process needs to be completed to provide greater certainty regarding the future of the area. While the Territory and Commonwealth are working on an interim solution to provide a medium-term level of tenure, resolving the Eastern Broadacre Planning study should be a priority.
- 3.409. The Draft Canberra Region Local Food Strategy supports a future for the local agriculture industry to increase supply for the Canberra community. This Strategy sets out a vision for

⁴²⁵ Mr Frederick McGrath-Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 6 December 2023, p 53.

⁴²⁶ Mr Frederick McGrath-Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 6 December 2023, p 54.

⁴²⁷ Mr Frederick McGrath-Weber, President, ACT Rural Landholders Association of Farmers, *Committee Hansard*, 6 December 2023, p 53.

the ACT's agricultural sector. It will guide the future planning and management of the region's rural and urban agricultural production.

- 3.410. The Strategy highlights that the 'review of the ACT's planning system is providing an opportunity to ensure that rural land zoning and lease arrangements better reflect and facilitate the goals of supporting more food production'. In the Committee's view, making clever use of the land would be facilitated by incorporating, where appropriate, the Canberra Region Local Food Strategy and establishing 'agriculture' as its own zone, as opposed to being a zone within the Non-Urban Zones Policy.

Recommendation 25

The Committee recommends that with respect to rural leases, the ACT Government:

- Work with the Commonwealth to provide improved tenure outcomes for leases in the Majura Valley;
- Finalise the Eastern Broadacre Planning Study and Eastern Broadacre Strategic Assessment; and
- Consider Incorporating once finalised the Canberra Region Local Food Strategy into the Territory Plan.

Other issues:

Transitional arrangements

- 3.411. There also appeared to be confusion around the transition period for assessment of DAs, with Property Council of Australia highlighting it in their submission as a concern:

There are still further questions around how the transition period will work for the 27th of November. Currently it is described the 27th will be on the previous rules and planning system and those after the 27th on the new that are submitted under the old planning system but require further information to EPSDD post the cutoff date post 6 months from the 27th. Seemingly these will be assessed under the new planning system and be non-compliant.

It is imperative that EPSDD make clear that DA's submitted before the 27th of November will continue to be assessed under the old planning system until a determination is provided.⁴²⁸

- 3.412. Mr Shane Martin of the Property Council explained their understanding that from 27 November 2023 when the new planning system commenced, there would be six months in which if you submitted up to that date in which those DAs would be considered under the previous planning system:

⁴²⁸ Property Council of Australia, *Submission 20*, p 2.

I can start; then I will throw to Pieter, because he has some pretty live examples. As it was described to us in the training that EPSDD provided to us, obviously, you had until 27 November to submit under the old system. It would be considered under the old system; then, effectively, what would happen is that if they required more information or there was something else going on, they would come back to you under the old system. However, our understanding from EPSDD was that we would only have that time frame up to six months; then, effectively, anything from that period would be considered under the new system.⁴²⁹

- 3.413. Mr Pieter van der Walt argued that it is uncertain to many what will happen once the six-month period is reached, given many complex developments will take longer than six months to work its way through the assessment process:

Shane summed it up quite well. We have proposals that have been transacted and approved before the change. We have proposals that have gone in in the last, say, 12 weeks, before the legislation change happened. My understanding of the transitional arrangements is that we have a six-month period in which these applications will be administered in development assessment, or the proponent has the opportunity in the normal course of his business to make amendments or changes, and utilising the previous planning system for that.

What is not so clear is: when we get to the six-month period that is afforded, what happens at that stage? It appears very clear regarding proposals that have already been approved. If it is still in construction and the like, you could still make augmentation amendments to those, but you will have to make your application under the system as it sits today. That, in itself, potentially brings some complexity, where the current system, being an outcomes-based system, and the assessment of that, is really different from what has given rise to the original application that has already been approved.

Often, in building approval and in construction, especially when we look at more complex developments, it sometimes takes two, three, four or five years to build. There is some concern as to how we will deal with some of these outcomes-based matters. If you seek a change, will the assessment be confined to the change you are making, or will it be an assessment of the broader scheme in that context, given that you are trying to work—⁴³⁰

- 3.414. There was also an additional concern from witnesses about this issue being compounded by a potential spike in DA applications just prior to the commencement of the new Territory Plan, with one witness stating to the Committee that he had submitted over the last ten weeks approximately four to five times the number of DAs usually submitted.⁴³¹

⁴²⁹ Mr Shane Martin, Executive Director, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2023, p 141.

⁴³⁰ Mr Pieter van der Walt, Member, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2024, pp 141-142.

⁴³¹ Mr Pieter van der Walt, Member, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2024, p 142.

- 3.415. Ms Arabella Rohde suggested to the Committee that her organisation was seeking some confirmation that DAs submitted during the transitional period would continue to be dealt with under the old system:

We would be seeking some confirmation or assurance that developments that are submitted under a certain interim arrangement can be done through that interim arrangement, including potential amendments of DAs after they are approved, which we know is sometimes a necessity due to in-ground conditions or things that occur on sites or adjustments. It will be difficult to administer it across two different planning schemes.⁴³²

- 3.416. Mr Ben Ponton indicated to the Committee that while there was an expected spike in DA applications, it was in fact less than what was expected.⁴³³

- 3.417. Mr Ponton also clarified for the Committee that the six-month transitional period is for amendments only, after approval has been received:

...But in terms of the six months, that is for amendments. So once you lodge, if it takes a year, which I would hope not, but for some if it is going backwards and forwards, or there are particular issues that need resolution, then it will be assessed and determined under the previous planning system. The six months is once you have your approval, and you wish to seek an amendment, you have six months.⁴³⁴

- 3.418. However, he stated that once that six-month period elapses, any DAs approved after that period will need to have any subsequent amendments dealt under the new system:

So once it is approved, if it is approved beyond the six months, yes, you may not be able to amend it under the old system, but you can amend it under the new system. I do not think that is necessarily a bad thing because we will be seeking people to again be thinking about the outcomes. There is no reason why that cannot occur...⁴³⁵

- 3.419. Mr Ponton further stated, after questioning from the Committee, that it would not be complex at all for a DA submitted under the old system to be amended under the new system, adding that the new system is more flexible.⁴³⁶ He also argued the 6 month transition period is important as there is a need to have point at which the old system ceases and the new system commences, as there are challenges in running two concurrent systems.⁴³⁷

⁴³² Ms Arabella Rohde, Vice-President, Property Council of Australia (ACT & Capital Region), *Committee Hansard*, 7 December 2023, p 143.

⁴³³ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 179.

⁴³⁴ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 180.

⁴³⁵ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 180.

⁴³⁶ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 180.

⁴³⁷ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, pp 180–181.

Committee comment

- 3.420. The Committee considers that there is a need to provide greater certainty and clarity during the transition period to DA applicants who submitted DAs under the old planning system, specifically in relation to how amendments to their DAs will be dealt with. The Government should reconsider whether the existing transitional arrangements in the *Planning Act 2023* are appropriate in that regard.

Recommendation 26

The Committee recommends that the ACT Government consider how amendments to DAs submitted under the former planning system can be best handled going forward.

Phillip precinct zoning changes

- 3.421. The Committee heard from a number of individuals and organisations opposition and concern in relation to zoning changes outlined in the Territory Plan for the Phillip Service Trades area.⁴³⁸
- 3.422. The zoning change would see the Philip Trades area re-zoned from CZ3 to PD3, in which residential would be prohibited.⁴³⁹
- 3.423. The Territory Plan explanatory report provides the following justification for the change: ‘Uses permitted in the CZ3 services zone in Phillip have been amended to remove residential use as a permitted use. This is to protect the service trade uses in the area from being impacted by residential development’.⁴⁴⁰
- 3.424. The Public Transport Association of Canberra highlighted to the Committee in its submission that the idea of transforming the Phillip services Trades area through medium-rise, mixed use residential development has been an ACT Government policy since the release of the 2004 *Woden Town Centre Master Plan*, and was subsequently reaffirmed in the 2015 *Woden Town Centre Master Plan*, and eventually formally implemented in the previous Territory Plan through Draft Variation 344 in August 2018.⁴⁴¹

⁴³⁸ See, for example: Mr Kostas Livas, *Submission 3*; Mr Daryl Read, *Submission 4*; Dr Ali Ashrafi, *Submission 6*; Mr Doug O’Mara, *Submission 9*; Mr Peter Norton, *Submission 10*; Mr Jim Brennan, *Submission 11*; Intellectual Property Group, *Submission 12*; Civium Property Group, *Submission 14*; Ryan Futures Pty Ltd, *Submission 16*; Carroll Super Fund Trust, *Submission 17*; Mr Jiale Zhu, *Submission 18*; Long Term Investments, *Submission 19*; Public Transport Association of Canberra, *Exhibit 9*; Greater Canberra, *Exhibit 13*, p 2; Mr Peter Micalos, *Exhibit 14*; Civium Property Group, *Exhibit 15*; Colbee Court Unit Trust, *Exhibit 16*; Paul’s Home improvement Centre, *Exhibit 18*; Intellectual Property Group, *Exhibit 25*; Intellectual Property Group, *Exhibit 26*; Mr Doug O’Mara, *Exhibit 27*; Mr Doug O’Mara, *Exhibit 28*.

⁴³⁹ See, for example: Kostas Livas, *Submission 3*, p 1; Doug O’Mara, *Submission 9*, 1; Peter Norton, *Submission 10*, p 1; Intellectual Property Group, *Submission 12*, p 1; Civium property Group, *Submission 14*, p 1; Ryan Futures Pty Ltd, *Submission 16*, pp 1–2; Carroll Super Fund Trust, *Submission 17*, p 1; Long term investments, *Submission 19*, p 1;.

⁴⁴⁰ ACT Government, [Territory Plan Explanatory Report](#), p 26.

⁴⁴¹ Public Transport Association of Canberra, *Exhibit 9*, p 1.

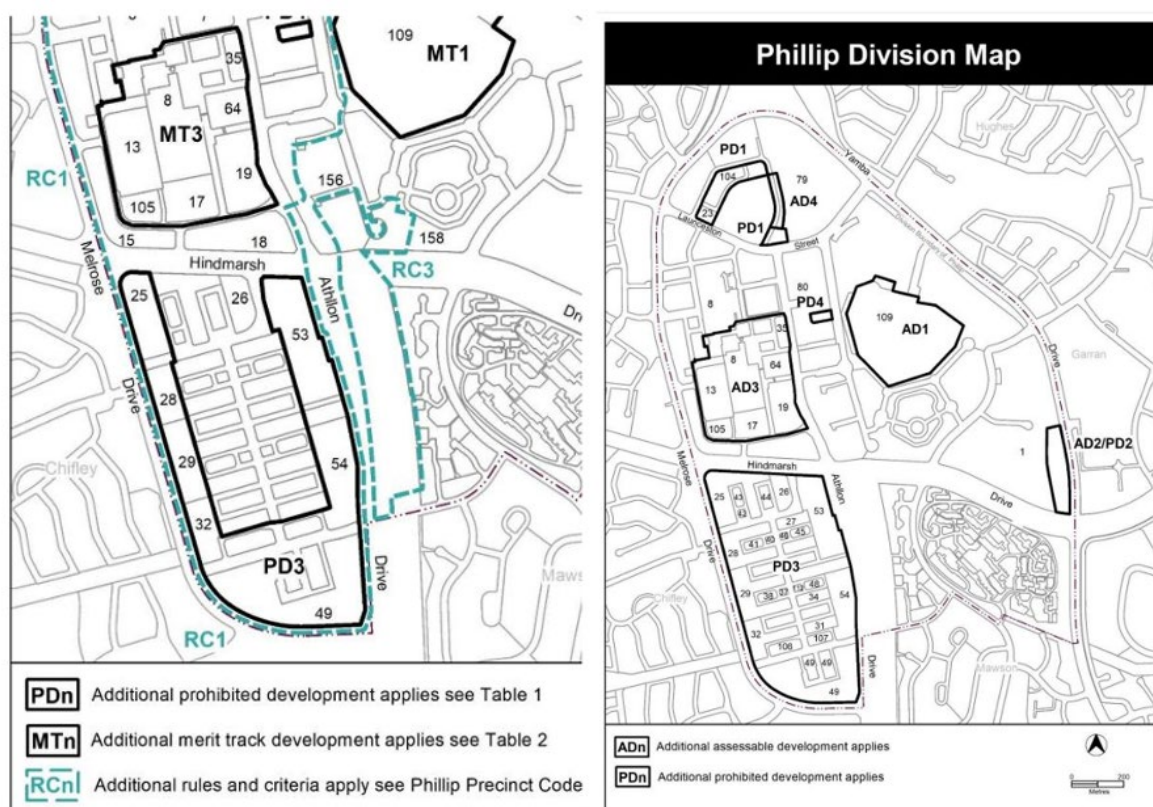


Figure 5: Comparison of zoning changes in Phillip Trades Area [Source: Civium Property Group, *Submission 14*, pp 5–6.]

Phillip Traders perspectives

- 3.425. Many of the Phillip Traders who wrote into the Committee were concerned about the potential impact of the changes on their investment given they purchased it on the understanding it would have residential potential in the future in accordance with a 2015 Master Plan that allowed residential and mixed used development.⁴⁴²
- 3.426. For example, Mr Peter Norton expressed to the Committee:

There was no consultation. I was fortunate to be alerted to it through the Civium group. It will have a dramatic effect on my family's investment. We purchased in June 2021, and it was very much part of the assessment of the business case that residential redevelopment was a possibility in about 10 years time. It was included in the information pack that was provided by the vendors. They had draft plans drawn up, but not formally submitted.⁴⁴³

- 3.427. Similarly, Mr Chris Donoghue said:

⁴⁴² See, for example: Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 82; Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, p 83; Mr Doug O'Mara, Civium Property Group, *Committee Hansard*, 6 December 2023, p 84; Mr Joseph Pham, Colbee Court Unit Trust, *Committee Hansard*, 6 December 2023, p 85; Mr Jiale Zhu, *Submission 18*, p 1; Paul's Home Improvement Centre, *Exhibit 18*, p 1;

⁴⁴³ Mr Peter Norton, *Committee Hansard*, 6 December 2023, pp 82–83.

Similarly, mine is a retirement investment. We got it about 10 years ago. We had some people come through earlier from the LDA, probably about eight or nine years ago, who said we could build up to 4½ storeys. They said, “You could possibly get five in.” We said, “That’s good for the future.”

He talked about Phillip being like the next Braddon. It has a vista. There are certain commercial businesses in the middle. We still have the motor traders. Certainly, from Hindmarsh Drive, they wanted the vista to look nice. It could have a little bit of residential on top of commercial, leading into it. Phillip is now the centre of Canberra—it is, definitely—and, with the population, obviously, we can’t go west of the Murrumbidgee, so population will grow in and out, and there will be infill.

We thought, “This is good for 10 years.” I am 60, and I thought, “This will be great.” I was 50 back then. I thought that, in about 20 years time, it will be a good investment, whether we sell it off with that purpose or we redevelop with some other interested traders around us, which would be a good thing.⁴⁴⁴

- 3.428. When asked by the Committee if he felt misled in relation to the changes, Mr Doug O’Mara agreed:

Absolutely. My own personal situation is that we had a design review panel meeting in November last year, and I received a report back from the design review panel saying, “This is exactly what we want from this zone. We want a Braddon.” The words were, “We want a Braddon,” and that is the reason residential was put in that zone in the first place. The zoning was only added eight years ago, in 2015, when it was updated. We are one year into design and siting for my actual project DA, but before that I lodged an application to add residential to my lease purpose clause. That is probably 18 months old now, and I still do not have an answer on that. I am reflective of the challenges that all of the owners are having in that precinct.⁴⁴⁵

- 3.429. Mr Jim Brennan wrote that the changes were unfair given people had purchased in the area on the basis of the potential value:

Unfair to remove potential value from purchasers. There should be certainty when purchasing and ACT Government taking this away. People have purchased in area knowing this.⁴⁴⁶

- 3.430. Others indicated the potential for distrust to arise and investment to be discouraged from the decision, given many purchased their properties on the basis that a future use for their land could include residential/mixed use.⁴⁴⁷

⁴⁴⁴ Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, pp 83–84.

⁴⁴⁵ Mr Doug O’Mara, *Committee Hansard*, 6 December 2023, pp 85.

⁴⁴⁶ Mr Jim Brennan, *Submission 11*, p 1.

⁴⁴⁷ See, for example: Intellectual Property Group, *Submission 12*, p 2; Ryan Futures Pty Ltd, *Submission 16*, p 2; Long Term investments, *Submission 19*, p 2.

3.431. Most of those who spoke or wrote to committee on the issue were of the view that there was no consultation with those affected or opportunity for them to provide feedback.⁴⁴⁸

3.432. For instance, Mr Pham indicated that the public hearing was the first time he had an opportunity to express his views on the change:

No. We have tried to get more information. We first heard of it through Civium advising us that there were going to be changes, and that was a shock to all of us. This is probably the first time we have had a chance to have a say, in this meeting.⁴⁴⁹

3.433. He also indicated that others were also never consulted:

We have reached out to a lot of traders in the area, including the Phillip council, and Tom Adam. They advised that they have never been consulted, either. They have never had any issue with residential there. We are trying to get to the bottom of why there has been a lack of consultation.⁴⁵⁰

3.434. Mr Livas similarly highlighted a lack of consultation in his submission:

We also raise a significant consultation issue with this proposed change. Not one property owner in Phillip that we've spoken to has been contacted by the ACT government to advise of the potential change to the land uses on the land they own. This not only creates a level of distrust but has not given those land owners a reasonable opportunity to comment on the proposed changes.⁴⁵¹

3.435. Only Mr O'Mara of Civium indicated to the Committee that he had previously known about the change, but only due to seeking more information for a Development Application:

I reached out. Because we have a DA in place, I had our architect, as well as our town planner, reach out to ACTPLA. We got a response from the senior director of the new Territory Plan asking for clarification, because the documentation that was drafted actually contradicted itself, within that draft document. It referred to a section, PD3, within the rezoned area, but there was another section that actually contradicted it.

We reached out to the Territory Plan senior director, and they advised that there was an error in the draft of the Territory Plan. We said, "Does that mean that we can do residential or we can't?" One section says we can; one says we cannot. We were given clear advice that residential will not be permitted in that zone, moving forward.⁴⁵²

⁴⁴⁸ See, for example: Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 82; Mr Norton, *Committee Hansard*, 6 December 2023, p 85; Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, pp, 85, 86; Mr Joesph Pham, Colbee Court Unit Trust, *Committee Hansard*, 6 December 2023, p 86; Mr Kostas Livas, *Submission 3*, p 2; Mr Peter Norton, *Submission 10*, p 3; Civum Property group, *Submission 14*, p 2; Ryan Futures Pty Ltd, *Submission 16*, p 2; Long Term Investments, *Submission 19*, p 2.

⁴⁴⁹ Mr Joseph Pham, Colbee Court Unit Trust, *Committee Hansard*, 6 December 2023, p 86.

⁴⁵⁰ Mr Joseph Pham, Colbee Court Unit Trust, *Committee Hansard*, 6 December 2023, p 89.

⁴⁵¹ Mr Kostas Livas, *Submission 3*, p 2.

⁴⁵² Mr Doug O'Mara, *Committee Hansard*, 6 December 2023, p 86.

- 3.436. The Public Transport Association of Canberra was of the view that such a significant change should have seen greater consultation:

Overturing a twenty-year old planning policy that has been in effect for five years requires more consideration and consultation. Providing opportunities for people to live in an existing commercial area, close to amenities, rapid buses, and the planned Light Rail Stage 2B extension to Mawson, is entirely consistent with the 2018 Planning Strategy's commitment to "deliver more choice in housing and make sure it is well located to public transport, jobs and services". It is a major policy decision and should not be taken lightly.⁴⁵³

- 3.437. The Committee also heard from witnesses that the proposed changes would have impacts on the potential of their investment properties and their own financial situation.⁴⁵⁴ For some, the stakes were extremely high, with one witness writing:

...For many years I have calculated the cost of demolishing and rebuilding the current buildings and I always came up with a huge loss. The financial figures become positive only if we add income from added residential units above each building. With this background I have invested all my business and my family's future on this purchase. I put everything that I have gained in the last 40 years into this investment. This is the only commercial investment that I have done and for this investment I have taken a huge mortgage. With your proposed plan I will lose everything. It will affect my family and their future. I am very surprised that the committee has not informed the public about this change. If I had known that plan, I would not have invested in the Phillip area at all.⁴⁵⁵

- 3.438. Mr O'Mara highlighted to the Committee the impact of the changes on his situation:

I will tear up half a million dollars that I have spent on this DA by following government rules and the master plan and zoning requirements. Our family will lose half a million dollars. That is just in the DA fees. As late as a month or so ago, we paid government more fees to process the additional requirements that they were seeking from us. That is a significant amount of money for anyone.

That will be the immediate impact, but the other impact, similar to what these gentlemen have said, is that the value will be less. The land values will go down, because there is a latent, unrealised, unimproved value that sits on those blocks at the moment because there was allowable zoning for residential. If you take residential out of that, our land values will drop. I do not know what the impact will be, but it will be material.⁴⁵⁶

- 3.439. Mr Pham too outlined to the Committee the impact on his Unit Trust's plans:

⁴⁵³ Public Transport Association of Canberra, *Exhibit 9*, p 1.

⁴⁵⁴ See, for example: Mr Kostas Livas, *Submission 3*, p 2; Dr Ali Ashrafi, *Submission 6*, p 1.

⁴⁵⁵ Dr Ali Ashrafi, *Submission 6*, p 1.

⁴⁵⁶ Mr Doug O'Mara, Civium Property Group, *Committee Hansard*, 6 December 2023, p 87.

Our group always had plans to develop that area. We always believed in that change for Phillip into a Braddon sort of area. Our plans in the longer term were always to develop it. If they change to having no residential, we will definitely have to change our strategy. We do not know whether we would keep the property. We definitely would not redevelop it, if we are not able to do residential. It would have a massive impact on our plans. As I said, we relied on that master plan, and that Phillip was going to be a Braddon, when making our investment decisions.⁴⁵⁷

3.440. Mr Norton said: 'I would face quite a significant fall in the market value of the property. Therefore I would probably not sell it. We would continue to hold it'.⁴⁵⁸

3.441. Mr Donoghue similarly expressed to the Committee:

...It is coming to a stage now where we want to redevelop the place. Obviously, if there is residential, that lends itself to economies of scale. You redevelop it, but you make it look better. It is time. We have a few old, tired looking buildings, and if owners get together, we can put up something that is quite nice. That is what Canberra is all about. You want it to look good. Now, with what Doug is doing, that is certainly on the agenda. It is not just about putting up a square, concrete block. It is about putting up something nice and making the place look good.

If I do not do that, if this goes through, with my place on Hindmarsh Drive, I am not going to redevelop it. There is no need. I am fully tenanted. It is pulling in good money, even with paying our rates, but that is all it would be.⁴⁵⁹

3.442. Mr Norton was sceptical as to the types of businesses the proposed changes are intending to benefit:

I think I understand the kinds of businesses that the proposed changes are trying to protect, and it does not really gel with the kind of tenants that I have. My tenants are a psychology business, a training business, a hairdresser, a mortgage broker and a sports store. These are the kinds of things that can be quite well accommodated with mixed use development—residential above, ground and first floor for existing purposes.

... I am struggling to see what kind of business is actually trying to be protected. I get it that the area was previously strong with automotive trades, but the world has changed. There are simply less small automotive workshops around. Service intervals on our motor vehicles have gone from roughly three-monthly to six-monthly. In the move to electric vehicles, servicing needs will be even less. I am still struggling to understand the heavy industrial kind of businesses that people might be thinking of protecting. They have already moved.⁴⁶⁰

⁴⁵⁷ Mr Joseph Pham, Colbee Court Unit Trust, *Committee Hansard*, 6 December 2023, pp 87–88.

⁴⁵⁸ Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 86.

⁴⁵⁹ Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, p 87

⁴⁶⁰ Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 83.

3.443. Paul's Home Improvement Centre felt there was already adequate protections for service trade uses in the area.⁴⁶¹

3.444. Mr Donoghue noted to the Committee the potential opportunity cost to going ahead with the change:

With respect to taking that away, we looked at it and said, "What's the cost to the ACT government if you actually go ahead with what you're proposing?" There are rates, and there is economic activity that could happen in the future. Obviously, Canberra will not stop growing, because the public service needs to get bigger and we need people to run it.⁴⁶²

3.445. Kostas Livas and others too noted the loss in potential revenue for the ACT Government from rates, stamp duty and lease variation charges from making the changes.⁴⁶³

3.446. Mr Norton, Mr Donoghue and Mr O'Mara, among others, expressed the view to the Committee that the changes were also a poor outcome for the Phillip area, with many ageing buildings at the end of their functional life and requiring upgrades, and the area now likely to become tired and stagnate if there is no redevelopment to revitalise it.⁴⁶⁴

3.447. For example, Mr Norton said:

Good town planning creates activity and vibrancy. If you go through Phillip at the moment, after 6 pm on any day of the week, it is a ghost town. We are building thousands of apartments across Hindmarsh Drive near Woden Plaza, but we will have a stagnated ghost town right next to it. It does not make sense.⁴⁶⁵

3.448. Mr Kostas Livas similarly expressed the view in his submission that allowing residential would revitalise the area:

The Phillip services trades area includes a range of 2 level buildings generally built in the 1970's with most buildings having periodical minor upgrades during the last 50 years. Some of these buildings are now reaching a point where they are getting towards the end of their functional lives and would benefit from demolition and potential re-development of the sites. This redevelopment would bring a broader range of commercial users and introduce residential use to the area, adding vibrancy to the precinct and all the Woden Town Centre.⁴⁶⁶

3.449. A number of witnesses and submissions saw the Phillip area having the potential to become a Braddon-like precinct in the south of Canberra, in which mixed use buildings

⁴⁶¹ Paul's Home Improvement Centre, *Exhibit 18*, p 1.

⁴⁶² Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, p 84.

⁴⁶³ See, for example: Mr Kostas Livas, *Submission 3*, p 3; Mr Peter Norton, *Submission 10*, p 5; Intellectual Property Group, *Submission 12*, p 3; Civium Property Group, *Submission 14*, p 3; Paul's Home Improvement Centre, *Exhibit 18*, p 2.

⁴⁶⁴ See, for example: Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, p 88; Mr Doug O'Mara, *Committee Hansard*, 6 December 2023, p 88; Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 88; Daryl Read, *Submission 4*, p 1; Dr Ali Ashrafi, *Submission 6*, p 1; Mr Peter Norton, *Submission 10*, p 1; Mr Jim Brennan, *Submission 11*, p 1; Civium Property Group, *Submission 14*, p 2; Mr Jiale Zhu, *Submission 18*, p 1; Long Term investments, *Submission 19*, pp 1–2.

⁴⁶⁵ Mr Peter Norton, *Committee Hansard*, 6 December 2023, p 88.

⁴⁶⁶ Mr Kostas Livas, *Submission 3*, p 1.

would facilitate a combination of business and residential options.⁴⁶⁷ Mr Jim Brennan similarly thought the area had potential to become like Fitzroy in Melbourne or Surrey Hills in Sydney.⁴⁶⁸

- 3.450. Mr Donoghue cited the example of the Habitat building in Braddon as an example of the potential for Phillip:

Now look at it: you have an Italian place underneath; you have residential on top. It has also spurred other activity around it, and you have people there. If you look at the Canberra Times food guide, all of these new foodie places are opening up. They are all in Braddon or somewhere on the north side. They have probably made a few bob out of it. That is good; good on them. It has created this funky vibe, or it has helped to create it. It looks good, too.

You have these other places; there is one-upmanship and it is about making their place look a little bit better, with a better restaurant or coffee shop. That is what Phillip needs now. We have the big Westfield over the road. In Canberra, we like our funky little areas, and I think Phillip will be like that one day.⁴⁶⁹

- 3.451. Mr Livas also expressed the view that the proposed changes were in direct contradiction of the Government's own goal to increase Canberra's housing supply:

It amazes us that on one hand the ACT Government has publicly stated on multiple occasions that it wants to increase housing supply and housing options within the ACT... This includes a key opportunity to "enable large urban renewal projects". And on the other hand reduced the capability for this to occur. The removal of Residential use from this precinct is in direct contradiction to this policy and will stop any potential urban renewal of a tiring Phillip precinct.⁴⁷⁰

- 3.452. This was supported by Daryl Read⁴⁷¹, Peter Norton⁴⁷², Intellectual Property Group⁴⁷³, Civium property group⁴⁷⁴; Long Term Investments⁴⁷⁵; Peter Micalos⁴⁷⁶

- 3.453. He and others also highlighted other future initiatives of the ACT Government that the change would seemingly contradict, such as the planned Light Rail to Tuggeranong, which he argues 'a higher residential population in close walking proximity will be beneficial to the future light rail', and upgrades and improvements to the area discussed in the Woden District Strategy, which he argues would be 'extremely difficult to achieve these upgrades without redevelopment of the current aging buildings. Revelopment [sic] into mixed use

⁴⁶⁷ See, for example: Mr Kostas Livas, *Submission 3*, p 2; Mr Daryl Read, *Submission 4*, p 1; Mr Peter Norton, *Submission 10*, p 2; Intellectual Property Group, *Submission 12*, p 2; Civium Property Group, *Submission 14*, p 2; Long Term Investments, *Submission 19*, p 2; Greater Canberra, *Exhibit 13*, p 2; Paul's Home Improvement Centre, *Exhibit 18*, p 2;

⁴⁶⁸ Mr Jim Brennan, *Submission 11*, p 1.

⁴⁶⁹ Mr Chris Donoghue, *Committee Hansard*, 6 December 2023, pp 88–89.

⁴⁷⁰ Mr Kostas Livas, *Submission 3*, p 1.

⁴⁷¹ Mr Daryl Read, *Submission 4*, p 1

⁴⁷² Mr Peter Norton, *Submission 10*, p 2.

⁴⁷³ Intellectual Property Group, *Submission 12*, p 1.

⁴⁷⁴ See, for example: Civium Property Group, *Submission 14*, p 12; Civium Property Group, *Exhibit 15*, p 1.

⁴⁷⁵ Long Term Investments, *Submission 19*, p 1.

⁴⁷⁶ Mr Peter Micalos, *Exhibit 14*, p 1.

would be the catalyst for the public infrastructure upgrades required to achieve these principles'.⁴⁷⁷

Government response

- 3.454. In response to a question from the Committee regarding the above-mentioned changes in Phillip and the claims of a lack of consultation with regards to them, the Director-General of EPSDD noted to the Committee that when the change was originally made to allow residential in the Phillip Services trades area, the take-up was slow.⁴⁷⁸
- 3.455. He added: 'We received a couple of DAs and often there was comment from joint lessees, and also through other regulatory agencies, around concern about potential conflict that might occur between residential and other uses. As we explored this further in developing the plan, we also started to turn our minds to other feedback that we had been receiving in relation to the ability to have service providers close to where people live'.⁴⁷⁹
- 3.456. Mr Ponton also acknowledged that whilst Braddon is a 'fantastic example of urban renewal', he pointed out to the Committee that increases in residential in the area have seen service providers 'squeezed out' due to increased rents, and moving further out.⁴⁸⁰
- 3.457. He explained this later:

Not as many—if I could say this, Ms Clay—as we used to have in terms of the service trades. In fact, we are seeing more move out. A car yard recently moved out and it is now a car park. It will be redeveloped. I suspect that, over time, looking across other examples of this, it will not be a service trades area; it will be more a commercial and mixed-use area. That is what potentially could happen. Interestingly, the people who have moved into those areas in Braddon and surrounding areas are saying that they have to go to Fyshwick to get their car serviced now, whereas they used to be able to get it serviced in Braddon. Listening to years and years of feedback prompted this decision. Whilst we all agree that Braddon is a fantastic place, it has had consequences in terms of the people who live in the local area, and we are responding to that.

- 3.458. The squeezing out of service trades, Mr Ponton argued, creates a risk where more service areas may need to be created in greenfield areas.⁴⁸¹
- 3.459. Mr Ponton also acknowledged there are also constraints in existing industrial areas such as Fyshwick which means service trades cannot be easily relocated there.⁴⁸²

⁴⁷⁷ Mr Kostas Livas, *Submission 3*, p 2; Mr Peter Norton, *Submission 3*, p 3; Intellectual Property Group, *Submission 12*, p 2; Civium Property Group, *Submission 14*, pp 2–3; Carroll Super Fund Trust, *Submission 17*, p 1; Long Term Investments, *Submission 15*, p 19, pp 2–3.

⁴⁷⁸ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

⁴⁷⁹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

⁴⁸⁰ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

⁴⁸¹ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

⁴⁸² Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

- 3.460. There is also a convenience factor, with Mr Ponton highlighting that feedback from the Molonglo Valley indicates they do not want to drive to Phillip or potentially Mitchell for services such as car servicing or lawn-mower repairs.⁴⁸³
- 3.461. Notably, with regards to the specific claim by witnesses and submissions that they bought in the Phillip services trades area because of the then potential for residential, Mr Ponton observed that ‘...Planning systems and zones change across the world all the time. There is no guarantee...’.⁴⁸⁴
- 3.462. In responding to a question from the Committee around whether those affected by the zoning change had been misled, Mr Ponton reiterated that the change was made in response to engagement with the Canberra community around protecting that service trades area:
- That was eight years ago—2025—and a lot of work has been happening in terms of our engagement with the Canberra community as part of the planning review work. As I have said, as a result of what we had been hearing and in reflecting on some of the examples that we had seen, we felt that protecting that service trades area was important. Of course, if the Committee makes a recommendation to change that and allow for residential—which, as I said, may risk those service trades areas continuing to provide those services, and then we will need to look elsewhere—that is something that the government could consider in its response.⁴⁸⁵
- 3.463. The Deputy Director-General, Dr Erin Brady also outlined to the Committee that the view that the Directorate ‘consulted with everyone through the district strategies’, and ‘consulted very broadly with lots of different stakeholders, and everyone was invited to participate’.⁴⁸⁶

Committee comment

- 3.464. The Committee is of the view that the changes to the zoning of the Phillips Service Trades area are contrary to several ACT Government objectives for the area, particularly that of increasing the ACT’s housing supply.
- 3.465. The Committee also notes that the ability to permit residential development in the area has been a longstanding policy objective of the ACT Government which multiple people have relied upon in purchasing their properties in the Phillip Service Trades area.
- 3.466. The Committee is concerned at the apparent lack of direct consultation with those affected, given this is a significant change which has a significant financial impact on those who have invested in the precinct clearly on the areas potential for mixed use development.

⁴⁸³ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 172.

⁴⁸⁴ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 173.

⁴⁸⁵ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 173.

⁴⁸⁶ Dr Erin Brady, Deputy Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 173.

- 3.467. The Committee considers in light of these reasons, the ACT Government should consult directly with those in the Phillip Service Trades Area, and reverse the proposed zoning changes.

Recommendation 27

The Committee recommends that the ACT Government consult directly with the traders and owners in the Phillip Service Trades area, with a view to reversing the zoning change that removed residential use from the Phillip Service Trades Area.

Forrest footpath

- 3.468. The Committee heard from a small number of witnesses about concerns regarding what appeared to be the removal or omission of a various number of items in the Territory Plan or supporting documents.
- 3.469. For example, the Committee heard from a couple of witnesses regarding the removal of a footpath in Forrest Section 19 from the draft Inner South Canberra District Strategy.
- 3.470. The Forrest Hotel and Halimah Jobling from Frank Knight Town Planning both highlighted to the Committee that there is an existing pathway between the Tennis Courts and Bowling green which is no longer delineated in the plan, with page 43 of the District Strategy noting that:

A full investigation of planning, environmental, infrastructure and traffic issues should be undertaken (including transport planning and modelling) with reference to the following principles:

→ Provide a publicly accessible pedestrian path between Dominion Circuit and National Circuit.

→ Access to the blocks is by the existing driveways. Avoid access from Dominion Circuit to Block 9 to . . .⁴⁸⁷

- 3.471. Hamilah Jobling and the Forrest Hotel object to the new pathway on the basis that the current one is superior to the proposed new one:

The existing laneway is an exemplar of good urban design, linking surrounding streets to the school and the fenced oval from the school crossing at the National Circuit end of the laneway. The c.1990 townhouses offer excellent passive surveillance: landscaping and lighting along the laneway are of an excellent standard.⁴⁸⁸

⁴⁸⁷ACT Government, *Territory Plan 2023*, NI2023-540, '[Inner South District Strategy](#)', p 43.

⁴⁸⁸ See, for example: Hamilah Jobling, Frank Knight Town Planning, *Submission 15*, p 1; Forrest Hotel, *Exhibit 36*, p 1.

- 3.472. This was supported by a small number of submissions made as part of the Government's YourSay consultation process on the draft territory Plan.⁴⁸⁹



Figure 6: Existing Forrest footpath as shown on Action Bus map [Source: Forrest Hotel, *Submission 23*, p 8]

- 3.473. They also expressed the concern that any new laneway located within Section 19 would reduce the size of existing blocks and therefore impact housing capacity, plus any extension of Bougainville Street to give more residents access to a laneway would necessitate the acquisition of two blocks or more from Section 20 which is R22 zoned provides housing.⁴⁹⁰
- 3.474. They suggested that the Territory Plan and District Strategy be amended to delete the potential to investigate a new laneway given in their view the existing footpath meets current needs.⁴⁹¹
- 3.475. In response to a Question Taken on Notice, Minister for Planning Chris Steel MLA wrote while the Draft Inner South District Strategy identified 'some possible conceptual pathway linkages', the final District Strategy only contains the principle in written form and does not include the concept linkages shown on plan or all of the existing pathways. This change was made following consideration of feedback and how certain elements would be represented in all district strategies. Importantly, he advised the Committee that just because something is not illustrated in the district strategies does not mean it does not exist or might not exist in future.⁴⁹²

Committee comment

- 3.476. The Committee considers that the written provision in the Inner South District Strategy of investigating a new pathway in Section 19 Forrest seems curious when there appears to be

⁴⁸⁹ See, for example: Name withheld, *YourSay Submission 154*, p 1; YourSay Submission 274, p 3; Name withheld, *YouSay Submission 96*, p 1.

⁴⁹⁰ Forrest Hotel, *Exhibit 36*, p 1.

⁴⁹¹ See, for example: Forrest Hotel, *Submission 23*, p 2; Dr Coleman, Forrest Hotel, *Committee Hansard*, 7 December 2023, p 161.

⁴⁹² Mr Chris Steel MLA, Minister for Planning, *answer to Question Taken on Notice 3: Forrest path*, 7 December 2023 (received 18 December 2023), p 2.

a suitable existing one. The Territory Plan or District Strategy should be amended to accordingly recognise the existence of the existing path.

Recommendation 28

The Committee recommends that the Planning Authority amend the Inner South District Strategy to reinstate the Forrest laneway and incorporate it into the District Strategy or the Territory Plan.

Inter-town public transport routes

- 3.477. The Public Transport association of Canberra highlighted to the Committee during the public hearing that the inter-town public transport route overlay had been removed from the territory plan.⁴⁹³
- 3.478. Mr Ryan Hemsley of the Molonglo Valley Community Forum, who is also chair of the PTBCR, explained to the Committee that the routes under the previous plan provided certainty, adding ‘...They provide confidence for people who are moving into new areas, such as the Molonglo Valley, that there will be high-quality public transport planned and provided for in the long term...’.⁴⁹⁴
- 3.479. Mr Hemsley added that during the consultation process, there was no full territory map produced which showed all overlays and zones.⁴⁹⁵
- 3.480. In response to questions from the Committee as to whether the removal of this overlay would impact certainty of where development can occur, the Chief Planner indicated that it would not affect it as it is a technical issue and because the overlay is referred to in the District Strategies.⁴⁹⁶ He further indicated the reason why it was removed from the Territory Plan:

...It was removed from the Territory Plan because the Territory Plan is a statutory document against which we assess DAs. That is its primary function. The intertown transport corridors that were identified there actually had no status in that neither provision linked back to that. So they were actually just cluttering up the map more than anything else. So we put them into the strategic planning documents that will then inform where we will look to change zoning to increase density along those corridors.⁴⁹⁷

⁴⁹³ Mr Damien Haas, Public Transport Association of Canberra, *Committee Hansard*, 6 December 2023, p 67.

⁴⁹⁴ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 73.

⁴⁹⁵ Mr Ryan Hemsley, Convenor, Molonglo Valley Community Forum, *Committee Hansard*, 6 December 2023, p 73.

⁴⁹⁶ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 166.

⁴⁹⁷ Mr Ben Ponton, Director-General, EPSDD, *Committee Hansard*, 7 December 2023, p 166.

- 3.481. The Public Transport Association of Canberra responded by expressing their view that the reasoning provided by the chief planner was not a valid reason for removing ‘a key element of Canberra’s metropolitan plan that has been in place since 1970’.⁴⁹⁸ The PTCBR also challenged the Chief Planner’s claim that the overlay did not have status under the former Territory Plan, referencing the former *Transport and Services Zone Development Code*, which contained the below provision:

TSZ1 - Transport Zone

Element 1: Restrictions on Use

Intent:

- a) To provide for development that does not jeopardise the Inter-town Public Transport Route
- b) To allow flexibility in development that is not inconsistent with the National Capital Plan

Rules	Criteria
1.1 Use and Form	
There is no applicable rule.	<p>C1</p> <p>A proposal for works on land identified on the map as forming part of the Inter-town Public Transport Route does not jeopardise the future provision of a separate right-of-way within the road reserve to accommodate this service.</p>

Figure 7: former Transport Zone reference to the Inter-town Public Transport Route overlay. [Source: PTCBR, *Submission 30*, p 1].

- 3.482. The PTCBR argues in their submission that by removing this provision from the Territory Plan, ‘The ACT Government has opened the door to inappropriate development which could complicate, or in a worst-case scenario entire rule out, the future delivery of infrastructure which enables fast, frequent and reliable public transport across the ACT’.⁴⁹⁹

Committee comment

- 3.483. The Committee is of the view that in planning for future public transport routes, it is critical to provide certainty as to the future locations of those routes. The Committee also acknowledges that while these routes are included in the District Strategies, the District Strategies are not the Territory Plan, and so the inter-town Public Transport Routes should be included in the Territory Plan.

Recommendation 29

The Committee recommends that the Inter-Town Public Transport Routes should be included in the Territory Plan 2023.

⁴⁹⁸ Public Transport Association of Canberra, *Submission 30*, p 1.

⁴⁹⁹ Public Transport Association of Canberra, *Submission 30*, p 2.

ACAT appeals

3.484. Due to the perception that there were no rules, or less rules, in the new planning system, some submissions and witnesses also identified concerns in relation to the ability for citizens to appeal planning decisions to ACAT.⁵⁰⁰

3.485. Ms Fiona Carrick expressed a fear of residents not being able to appeal to ACAT to seek enforcement of requirements in the Territory Plan, on the perception that the technical specifications do not have legal standing as they are guidance, not rules:

I am concerned that a resident may have standing to go to ACAT, but what point of law will they go to ACAT on? For example, overlooking and privacy, overshadowing and tree canopy have all been moved from the legislative side of the Territory Plan to guidance. On what point of law do you go to ACAT when you have a material detriment to your enjoyment of your property from overlooking, when there is no point of law that you can take to ACAT? It is about considering these things and then the government will say, “Well, yes, we have considered them.”⁵⁰¹

3.486. Mr Ian Hubbard of the Ainslie Residents Association supported this, and emphasised that it was the mandatory rules under the previous system that made it possible for ordinary citizens to challenge planning decisions:

Thanks for that. I think all the points that you raise are really important—the importance of mandatory rules in the act and in the ACAT process itself. Ainslie has been to ACAT a few times. The only way that we can actually get over the threshold of getting into ACAT is to have the development not meet some mandatory rules. If there are no mandatory rules—if they are just a nice thing to have—anyone who tries to appeal will not be successful. Most people who go to ACAT to appeal a decision are not successful. The successful people are very few and far between, and it is because of that.⁵⁰²

3.487. This too was endorsed by Mr Colin Walters of the Inner South Canberra Community Council, who outlined concerns that in the absence of rules, discretionary decision-making makes gathering grounds for appeal difficult:

I agree with everything Fiona said. The point is that at the centre of all of this is a discretionary judgement for a good outcome. When we talk about outcomes, we are talking about projected outcomes here; there are not real outcomes. You do not see the real outcomes until the thing is built. It is a projected outcome, and it is the opinion of, I would say, a mid-range official in the planning department. It is going to be very hard to assemble grounds for appeal against a judgement like that because, as Fiona says, much of the detail of the concept is now

⁵⁰⁰ Dickson Residents Group, Ainslie Residents Association & Reid Residents Association, *Submission 32*, p 1.

⁵⁰¹ Ms Fiona Carrick, President, Woden Valley Community Council, *Committee Hansard*, 6 December 2023, p 2.

⁵⁰² Mr Ian Hubbard, President, Ainslie Residents Association, *Committee Hansard*, 6 December 2023, p 15.

discretionary. Someone has come up with a judgement that it is a good outcome. How are you going to appeal against that?

We are very concerned that this will put a great deal of pressure on the decision-maker. In the past, the decision-maker had to look at the rules and say whether they were complied with or not. Now it is his or her view as to a good outcome. There is going to be a lot of pressure from developers to agree that such and such is a good outcome. I think it even creates a corruption risk down the track, because you can just see a developer saying, “We have heard your daughter needs a bit of help with her studies in Sydney. We just happen to have a couple of empty apartments there. You wouldn’t like to borrow one, would you?”⁵⁰³

- 3.488. This was later echoed in the joint submission by the Dickson, Ainslie and Reid residents Groups, which expressed a view that the community goes to ACAT infrequently due to expense and bias towards proponents, and that analysis of past ACAT decisions shows that the tribunal has only overturned Planning Authority decisions where there was a clear breach of a mandatory rule. Ultimately the submission takes the view that due to ‘planning rules’ now being optional as opposed to mandatory, ‘ACAT has been effectively neutered as community members will not have the resources to challenge the basis of a government decision against the combined expert resources of the government and proponent’.⁵⁰⁴
- 3.489. Referencing his own experience in challenging a particular planning decision at ACAT, Mr Ronald Brent of Dickson Residents Group added that mandatory rules often counterbalanced the perceived greater deference given by ACAT to developers’ planning experts in ACAT appeals:

I sat at one end of the table with some very good support from colleagues. There were three of us essentially from the community—none of us experts. At the other end of the table were two senior counsel, two firms of solicitors and probably close to a dozen paid experts. You wonder why communities lose!

We won that case, but we won it for one reason only: there were six, maybe five—it is arguable—breaches of mandatory requirements. There were, in fact, 64 breaches of discretionary requirements. Anybody looking at that would say, “That is enough to say this should have been rejected.” The discretionary requirements were there for a reason—you bend the rules here and there and you adjust these. Sixty-four breaches—no!

We were lucky because we were very brilliant, Marianne and I, in presenting the case! But perhaps, more realistically, because we did have six mandatory rules that we could hang our hat on.⁵⁰⁵

⁵⁰³ Mr Colin Walters, Chair, Inner South Canberra Community Council, *Proof Committee Hansard*, 6 December 2023, p 2.

⁵⁰⁴ Dickson Residents Group, Ainslie Residents Association & Reid Residents Association, *Submission 32*, pp 1–2.

⁵⁰⁵ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, pp 16–17.

- 3.490. A further benefit of this Mr Brent explained to the Committee was that it enables ordinary residents to not just necessarily oppose developments, but to instead seek modification of developments that, with the exception of some elements, they support going ahead:

...I guess what I am highlighting here is that we do not oppose developments, and in most ACAT applications, as you heard in the evidence about the last case, it is not about stopping the developments; it is about making them good developments. The risk is that the inherent bias in the system, which will always exist in favour of developers, is going to be exacerbated without clear, explicit rules.⁵⁰⁶

- 3.491. These concerns were similarly expressed in the Woden Valley Community Council's expression of interest to the Committee, arguing that there should be a broader ability to appeal to ACAT to ensure protections for Canberrans against poor planning outcomes stemming from subjective decisions:

The assessment under the design guides are very subjective so what controls are in place to protect neighbours when poor outcomes slip through.

- Development application process - neighbours should be able to appeal to ACAT about amending and reconsideration development application decisions regardless of whether they made a representation on the original DA decision.
- Exempt developments – neighbours need to be able to appeal to ACAT where poor decisions have an adverse impact on their use or enjoyment of their land⁵⁰⁷

- 3.492. Contrary to the view of the Community Councils that the new Territory Plan would make ACAT appeals more difficult, Richard Nash of Purdon was of the view that the new system would make appeals more likely, at least initially, given the uncertainty:

The move to a more subjective system is likely to bring challenges, at least in the initial phases.

o Subjectivity for developers in deciding to go for a proposal has more uncertainty at feasibility stage. It is potentially unclear what can be achieved, particularly on larger sites (although I think this will come with time).

o Subjectivity with decisions means interpretation by the community and the tribunal is potentially unknown. This arguably gives Senior members more ability to refuse/support 3rd party appeal, bringing more uncertainty for developers.⁵⁰⁸

Committee comment

- 3.493. The Committee, while acknowledging the concerns of residents that there are less protections for citizens under the new Territory Plan, considers that it is too early to tell whether the new Territory Plan and its supporting documents will adversely impact the

⁵⁰⁶ Mr Ronald Brent, Member, Dickson Residents Group, *Committee Hansard*, 6 December 2023, pp 18.

⁵⁰⁷ Woden Valley Community Council, *Exhibit 20*, p 1.

⁵⁰⁸ Mr Richard Nash, Managing Director and Head of Planning, Purdon Planning, *Exhibit 31*, p 1.

ability of citizens to seek review of planning decisions at ACAT under the new planning system.

Third party appeal rights

- 3.494. A limited number of industry representatives also perceived there being issues with the current breadth of potential applicants who can appeal a DA to ACAT, with the Property Council and Master Builders Association calling for 3rd party appeal rights to be limited to those directly affected by a DA.⁵⁰⁹ The Master Builders Association argued there was a need to trust the decision-makers in the Planning Authority to make the right decisions, expressing the concern that allowing third-party appeals takes power away from the Chief Planner.⁵¹⁰

⁵⁰⁹ See, for example: Property Council of Australia, *Submission 20*, p 2; Mr Michael Hopkins, CEO, Master Builders Association ACT, *Committee Hansard*, 7 December 2023, pp 131–132.

⁵¹⁰ Michael Hopkins, CEO Master Builders Association ACT, *Committee Hansard*, 7 December 2023, p 131.

4. Conclusion

- 4.1. The Territory Plan will be the cornerstone of the ACT's new outcomes-based planning system, and is intended to define the way the city develops for at least the next generation.
- 4.2. The evidence received throughout this inquiry creates a complex picture. On the one hand, there was broad support for an outcomes-based planning system, and the thinking that sits behind the planning system was appreciated by many, if not most, of those who contributed to this inquiry.
- 4.3. On the other hand, much commentary was made on the size and complexity of the various documents that make up and sit behind the Territory Plan. Many of these documents are not entirely consistent with each other, and while a hierarchy of documents has been established, this inconsistency has led to some confusion.
- 4.4. This inquiry was undertaken at a very early stage of the operation of the Territory Plan and the wider planning system – indeed, the planning system became operational within months of the inquiry commencing. As the inquiry was heading towards completion, not a single major development application had been notified under the new planning system. Major developments take years to complete, and the results that the Territory Plan leads to will not be clear to stakeholders for many years to come.
- 4.5. Partly as a result of both the complexity and the timing of this inquiry, there are many aspects that could not be fully explored. In some cases, this is a result of the newness of the planning system, in that key aspects of the planning system and its operation have not been fully tested and thus cannot be fully explored via a committee inquiry.
- 4.6. In other cases, this is a result of the expert witnesses upon which committees rely for evidence not having had time to effectively understand key aspects of the operation of the Territory Plan, the interaction of its various documents, and the potential outcomes this will lead to.
- 4.7. The Committee is cognisant that the *Planning Act 2023* contains provisions for reviews of its operation. One of these provisions, contained in Section 608, is for the current inquiry. Both major and minor amendments to the Territory Plan are required to undergo some level of committee scrutiny. Part 5.4 of the Planning Act also requires that, at least once every five years, the Minister must consider whether a review of the Territory Plan is required. Part 5.4 also sets out what this review must consider and how it must consult in conducting any review.
- 4.8. However, the Committee notes that a review held pursuant to Part 5.4 of the *Planning Act 2023* is to be conducted by the planning authority. In the Committee's view, some level of review of the Territory Plan's operation should be conducted.
- 4.9. While this inquiry has been substantial and seeks to make a worthy contribution via a series of detailed recommendations regarding issues that have arisen through the course of the inquiry, it would be beneficial for another round of consideration of the operation of

the Territory Plan to be undertaken by the relevant Assembly committee once the outcomes intended to flow from the new planning system start to emerge and become clear.

- 4.10. In this regard, the Committee believes it necessary that, in three to five years, another inquiry be held into the Territory Plan and associated documents by the Legislative Assembly committee responsible for planning matters at that time.

Recommendation 30

The Committee recommends that the *Planning Act 2023* be amended to include referral of the Territory Plan to the relevant Legislative Assembly Committee at least three years, and no more than five years, into its operation for consideration of the conduct of an inquiry.

- 4.11. The Committee would like to thank all those that participated in the Government's YourSay consultation process, as well as those who lodged an Expression of Interest to appear at the public hearings, made submissions to this inquiry, and those who appeared across the two days of public hearings.
- 4.12. The Committee would also like to extend its thanks the ACT Government for its participation in the inquiry, and for providing the Committee with copies of the submissions received as part of the YourSay consultation process.
- 4.13. The Committee makes 30 recommendations.

Ms Jo Clay MLA

Chair

7 March 2024

Appendix A: Submissions and Exhibits

No.	Submission by	Received	Published
1	Red Hill Residents Group	18/10/23	10/11/23
2	Geoff Davidson	20/10/23	10/11/23
3	Kostas Livas	26/10/23	10/11/23
4	Daryl Read	26/10/23	10/11/23
5	Ginninderry	26/10/23	10/11/23
6	Dr Ali Ashrafi	27/10/23	10/11/23
7	Dickson Residents Group	27/10/23	10/11/23
8	Ainslie Residents Association	27/10/23	10/11/23
9	Doug O'Mara	27/10/23	10/11/23
10	Peter Norton	27/10/23	10/11/23
11	Jim Brennan	27/10/23	10/11/23
12	Intellectual Property Group	27/10/23	10/11/23
13	Name withheld	27/10/23	10/11/23
14	Civium Property Group	27/10/23	10/11/23
15	Knight Frank Town Planning	27/10/23	10/11/23
16	Ryans Futures Pty Ltd	27/10/23	10/11/23
17	Carroll Super Fund Trust	27/10/23	10/11/23
18	Jiale Zhu	27/10/23	10/11/23
19	Long Term Investments	27/10/23	10/11/23
20	Property Council of Australia (ACT and Capital Region)	27/10/23	10/11/23
20.1	Property Council of Australia (ACT and Capital Region) - Addendum	02/11/23	10/11/23
21	Conservation Council ACT Region	24/11/23	15/12/23
22	Sue Tongue	28/11/23	15/12/23
23	Forrest Hotel	30/11/23	15/12/23
24	Friends of Grasslands	01/12/23	15/12/23
25	Stephanie Booker	05/12/23	15/12/23
26	Confidential	12/12/23	15/12/23
26.1	Confidential	12/12/23	15/12/23
27	Tim Field	08/12/23	15/12/23
28	Peter Jamieson	18/12/23	11/01/24

29	Office of the Commissioner for Sustainability and the Environment - Supplementary	16/01/24	31/01/24
30	Public Transport Association of Canberra - Supplementary	17/01/24	31/01/24
31	North Canberra Community Council	23/01/24	31/01/24
32	Dickson, Ainslie and Reid Residents Associations	24/01/24	31/01/24
33	Reid Residents' Association	01/02/24	15/02/24
33.1	Attachment – Planning Institute - Report	01/02/24	15/02/24

No.	Exhibit by
1	EOI - Richard Johnston
2	EOI - Hamish Sinclair
3	EOI - Tim Field
4	EOI - Griffith Narrabundah Community Association
5	EOI - Inner South Canberra Community Council
6	EOI - Bruce Paine
7	EOI - ACT Rural Landholders Association of Farmers
8	EOI - Molonglo Valley Community Forum
9	EOI - Public Transport Association of Canberra
10	EOI - Green Institute
11	EOI - Combined Community Councils of the ACT
12	EOI - Property Council of Australia (ACT and Capital Region)
13	EOI - Greater Canberra
14	EOI - Peter Micalos
15	EOI - Civium Property Group
16	EOI - Colbee Court Unit Trust
17	EOI - Reid Residents Association
18	EOI - Paul's Home Improvement Centre
19	EOI - Australian Institute of Architects (ACT Chapter)
20	EOI - Woden Valley Community Council
21	EOI - Commissioner for Sustainability and the Environment
22	EOI - the Braddon Collective
23	EOI - ACTCOSS
24	EOI - Gungahlin Community Council
25	Intellectual Property Group - Annex A - Braddon of the South
26	Intellectual Property group - The Lord
27	Doug O'Mara - National Capital Design Review - Panel's advice
28	Doug O'Mara - Woden Town Centre - Master Plan
29	Australian Institute of Landscape Architects
30	Name withheld - Submission
31	Richard Nash, Purdon - Presentation
32	Tony Trobe - Presentation

No.	Exhibit by
33	Griffith Narrabundah Community Association - Supplementary
34	Inner South Canberra Community Council
35	Imogen Featherstone - Riverview Developments
36	Forrest Hotel
37	the Braddon Collective
38	Tim Field - signs code
39	Tony Trobe - Block layouts
40	EOI - Emmanuel Notaras
41	EOI - Belconnen Community Council
42	EPSDD correspondence
43	EPSDD - Clarification of public hearing evidence
44	ACT Rural Landholders Association of Farmers

Appendix B: Witnesses

Wednesday, 6 December 2023

Community Council panel A

Inner South Community Council

- **Mr Colin Walters**, Chair

Woden Valley Community Council

- **Ms Fiona Carrick**

Gungahlin Community Council/Combined Community Councils of the ACT

- **Mr Peter Elford**, Member/Convenor

North Canberra Community Council

- **Mr Jochen Zeil**, Chair

Residents Group panel

Dickson Residents Group

- **Mr Ron Brent**, Member

Ainslie Residents Association

- **Mr Ian Hubbard**, Chair

Reid Residents Group

- **Ms Marianne Albury-Colless**, President

Griffith Narrabundah Community Association

- **Dr David Denham AM**, President

Individuals panel

- **Mr Richard Johnston**
- **Mr Tim Field**
- **Mr Tony Trobe**

Australian Institute of Landscape Architects (ACT Chapter)

- **Ms Cia Flannery**, President

Developers panel

Purdon Planning

- **Mr Richard Nash**, Managing Director and Head of Planning Practice

Planit Strategic

- **Mr Kip Tanner**, Director, Planner, Environmental Engineer

ACT Rural Landholders Association of Farmers

- **Mr Frederick McGrath Weber**, President

Ginninderry

- **Ms Imogen Featherstone**, Development Manager (Planning), Riverview Projects (ACT)

Panel

Greater Canberra

- **Mr Howard Maclean**, Convenor

Public Transport Association of Canberra

- **Mr Damien Haas**, Deputy Chair

Community Council Panel B

Molonglo Valley Community Forum

- **Mr Ryan Hemsley**, Convenor

Belconnen Community Council

- **Lachlan Butler**, Chair

Thursday, 7 December 2023

Phillip Traders panel

- **Mr Peter Norton**
- **Mr Chris Donaghue**, Hip Pocket Workwear and Safety, Paul's Home Improvement Centre
- **Mr Doug O'Mara**, Executive Chairman, Civium Property Group
- **Mr Joseph Pham**, Unit Owner, Colbee Court Unit Trust

Friends of Grasslands

- **Ms Sarah Sharp**, Vice-President

Office of the Commissioner for Sustainability and the Environment

- **Ms Victoria Herbert**, Acting Assistant Director
- **Mrs Miranda Gardner**, Director, Complaints and Investigations

ACT Climate Change Council

- **Mr Mark Howden**, Chair
- **Dr Paul Bannister**, Member

Australian Institute of Architects (ACT Chapter)

- **Mr Rob Henry**, Executive Director

Planning Institute of Australia (ACT Division)

- **Ms Natalia Anderson**, President
- **Mr Trevor Fitzpatrick**, Immediate Past President
- **Ms Negar Yazda**, Committee Member

Housing Industry Association

- **Mr Greg Weller**, Executive Director, ACT and Southern Region
- **Mr Jason Bisa**, General Manager, McDonald Jones Homes, and President, Housing Industry Association ACT and Southern New South Wales

- **Ms Nichelle Jackson**, Director, Canberra Town Planning, Housing Industry Association ACT New South Wales Committee

Master Builders Association of the ACT

- **Mr Michael Hopkins**, Chief Executive Officer

Property Council of Australia

- **Ms Arabella Rohde**, Vice President, ACT Division
- **Mr Shane Martin**, Executive Director, ACT & Capital Region
- **Mr Pieter Van Der Walt**, Member

Braddon Collective

- **Ms Ernestine Kirsch**

ACT Council of Social Service

- **Dr Devin Bowles**, Chief Executive Officer
- **Ms Corinne Dobson**, Head of Policy

Forrest Panel

- **Mr Emmanuel Notaras**
- **Ms Dorothy Barclay**, Director, Forrest Hotel and Apartments
- **Dr Murray Coleman**, Forrest Hotel and Apartments

Mr Mick Gentleman MLA

Manager of Government Business, Minister for Corrections, Minister for Industrial Relations and Workplace Safety, Minister for Planning and Land Management and Minister for Police and Emergency Services

Environment, Planning and Sustainable Development Directorate

- **Mr Ben Ponton**, Director-General
- **Ms Catherine Townsend**, ACT Government Architect

- **Dr Erin Brady**, Deputy Director-General
- **Mr Ben Green**, Executive Group Manager, Planning Urban Policy
- **Mr George Cilliers**, Executive Group Manager, Statutory Planning

Appendix C: Questions on Notice and Questions Taken on Notice

Questions on Notice

No.	Date	Asked of	Subject	Response received
1	06/12/23	Steel	Planning Governance Review	20/12/23
2	07/12/23	Steel	Government Landscape Architects	19/12/23
3	07/12/23	Steel	Phillip Service Trades Area	19/12/23
4	06/12/23	Steel	Pre-DA meetings	19/12/23
5	07/12/23	Steel	Good Consultation	20/12/23
6	06/12/23	Steel	Signs controls in new planning system	20/12/23
7	07/12/23	Steel	New planning website	20/12/23
8	07/12/23	Steel	National Capital Design Review Panel	20/12/23

Questions Taken on Notice

No.	Date	Asked of	Subject	Response received
1	07/12/23	Steel	Final City Plan	18/12/23
2	07/12/23	Steel	Landscape Architect FTE	14/12/23
3	07/12/23	Steel	Landscape Architect FTE	14/12/23

Appendix D: Gender distribution of witnesses

Beginning in April 2023, in response to an audit by the Commonwealth Parliamentary Association, Committees are collecting information on the gender of witnesses. The aim is to determine whether committee inquiries are meeting the needs, and allowing the participation of, a range of genders in the community. Participation is voluntary and there are no set responses.

Gender indication	Total
Female	16
Male	36
Non-binary	0
Gender neutral	0
No data	0

Appendix E: Additional Comments by Ms Jo Clay MLA (Chair)

Set city limits and upzone for the missing middle

- 1.1. Recommendation 12 is that the ACT Government should consider amending the Territory Plan to allow more zoning changes than are currently permitted. Evidence presented to the Committee suggests that the existing RZ1 changes are likely to have a limited impact on meeting the housing targets for the expected population growth. This four-year Planning Review represents a missed opportunity.
- 1.2. Smart density represents good planning and ensures we do not sprawl endlessly. Sprawl provides poor outcomes for people. It leaves them stuck with long commutes, far away from the services they need. It is expensive for Government to build new suburbs and provide the roads, power and water to service them. It destroys more and more habitat for our wildlife. It increases our risks of bushfire for people, property and the environment. The 2011 Report of the Independent Review of the National Capital Authority, "Canberra A Capital Place" recognised that Canberra's geographic area is "broadly equivalent to the area of Sydney bounded by the coast to the East, Hornsby to the North, Cronulla to the South, and Strathfield to the West..." and "...the spread of Canberra is comparable with Greater London which has a population of more than seven million." It is time for Canberra to set firm city limits. This is what mature cities do.
- 1.3. We need to set city limits and then we need to upzone to ensure our existing suburban areas can provide the ACT with the density we need to provide homes for our people. We need to do this in a climate and environmentally-sensible way. ACT Government is committed to transit-oriented development. Organisations from the IPCC to smart city planners all over the world are telling us we need to do it. Transport represents over 60% of the ACT's tracked climate emissions. We are in an extinction crisis. We are facing increasing threats from the bushfires that accompanies climate change. Endless sprawl on our outskirts will only make these issues worse. High-quality density with ample green spaces is the only sensible way forward.
- 1.4. Expanding on Recommendation 12, we need further changes in our RZ1 areas. We should upzone RZ1 to the RZ2 standard and we should make further zoning changes in RZ2, RZ3 and RZ4. In particular, corner blocks and transit corridors will offer good development opportunities. We should allow consolidation of existing blocks to provide two to four-storey town houses, terraces and low-rise apartments with shared green spaces in and around them. We should develop further in RZ2 zones due to their proximity to shops, public transport and other community facilities. We must do all this while retaining green infrastructure to keep us cool in a changing climate, and making sure we get the right homes in the right place. That is what this Planning Review should have delivered.

- 1.5. Developments should continue to recognise the special character of each of the individual district and come from engagement with the community to make sure they reflect the local setting and context. We should recognise and build on the efforts of past planners who introduced new housing typologies, such as Urambi Village, Wybalena Grove, Swinger Hill and the Grayson Street (Hackett) townhouses. These were new and different at the time and are now valued by the community.

Sell land to Housing ACT and community housing organisations at prices they can afford

- 1.6. ACT Housing and community housing organisations have to pay market rates to buy land before they can build public housing and community housing. They cannot afford to do this. This is one of the key reasons we do not have enough public and community housing. This has been the case for some time. The new Planning Act 2023 at section 274(1) repeats this problem. The Act provides the general rule that 'the territory planning authority must not grant a lease other than for the payment of an amount that is not less than the market value of a lease'.
- 1.7. The Committee heard this problem and in recommendation 17 said that Government should provide an explanation as to why they sell land at market rates to their own agency, ACT Housing, and to community housing organisations. I do not think this recommendation goes far enough. I have heard this problem explained in multiple hearings and fora over the past three years. I think it is time to address it.
- 1.8. There are already circumstances where Government does not have to sell land at market value. These includes 'a land rent lease' and 'the grant of a lease prescribed by regulation for which the amount prescribed by regulation has been paid' and 'the grant of a lease of land prescribed by regulation to the University of NSW'. The Planning Act allows the Government to consider granting land at less than market value in some situations, but not for public housing or community housing.
- 1.9. Reducing the cost of land would enable community housing providers and Housing ACT with the opportunity to better leverage funding from the Commonwealth through the Housing Assistance Future Fund. It would result in the construction of more public and community housing across Canberra. It would result in more public and community housing in areas that are close to services, transport and jobs and in areas where people want to live.

Facilitate affordable, public and community housing on blocks which are being redeveloped

- 1.10. Since 2017-2018 the ACT Government has imposed requirements for the delivery of affordable, community and public housing on land sales of unleased Territory land. There are no such requirements for redevelopments within established areas. The committee

heard that community housing and public housing should be encouraged on community facility land and made a recommendation (No 14) which I think does not go far enough.

- 1.11. The District Strategies identify sites which are close to shops, public transport, community and recreation facilities and employment opportunities, with greater opportunities for active travel. Many of these sites are owned by private entities.
- 1.12. While community, social and public housing is permitted in all residential zones, most development will focus on selling the land for private use While the policy outcomes in the Residential Zones Policy support the provision of housing choices Government should be more directive on leased land to play a role in meeting affordable, community and public housing needs.
- 1.13. Not all land will be considered appropriate for such housing - some form of assessment will be required. The leasing system provides the opportunity to require the provision of public, community and affordable housing when sites are being redeveloped.

Holistically protect native areas upfront – not in a piecemeal way

- 1.14. The Committee heard that we need to protect our nature areas and green spaces up front, and in a holistic way, not in a piecemeal way led by developers. The Committee made a recommendation (no 20) to ensure the protection of biodiversity and conservation areas in the Territory Plan using the Building a Biodiversity Network Across the ACT as a framework I do not think this goes far enough given the pace of development in Canberra. We need to put an overlay on Canberra now of what areas of habitat we will protect, both within our footprint and on our edge. And when we identify areas that have environment values, especially with high environmental values, we should not look to develop such areas, even if environmental offset areas have been identified.

Ample green spaces in areas subject to densification

- 1.15. Much of the commentary about increasing housing density suggests that the problem of housing affordability will be addressed. However, measures to infill the city should also be driven by sustainability and liveability principles, not just housing supply and affordability. We need homes people can actually live in a changing climate with increasing heat. These homes need access to essential services like schools, parks, public and active transport.
- 1.16. Recommendation No 24 is that the ACT Government take steps to ensure there are opportunities for ample green spaces in areas subject to densification, I do not think this goes far enough.
- 1.17. Increasing densities will bring more people, including children, with increased demands for recreation and community facilities. At a minimum there must be protection of living infrastructure plus the enhancement of urban green spaces. The Biodiversity Sensitive Urban Design Guide as well as the Blue-Green Network in the District Strategies recognises

the inherent environmental, ecological, recreational, health and community values of such greenspace areas.

- 1.18. As the city becomes more compact, pressure will be placed on green spaces, including urban parks and streets. These spaces are used on a daily basis and with more people moving through them improvements should be made so that people can congregate, get to mingle, talk and create connections. This leads to better health, recreation, environmental and economic and wellbeing outcomes while also improving property values.
- 1.19. While recognising the Blue and Green Drivers in the District Strategies, consideration of the broader landscape and greenscape issues raised by development proposals is critical to ensuring that those elements which make Canberra such an attractive and inclusive place are retained and enhanced.

Align Territory Plan with The Biodiversity Sensitive Urban Design Guide

- 1.20. The Committee heard concerns raised about whether the new Territory Plan will be implemented in a way that safeguards the environment, and how following due process, could still have poor outcomes for the environment and sustainability. The Committee recommended (No 24) that the ACT Government should consider making the Biodiversity Sensitive Urban Design Guide apply to areas smaller than one hectare, as does the Nature Conservation Act 2014 and Environment, Protection and Biodiversity Conservation Act 1999. I think we should do this and more.
- 1.21. The language of the Biodiversity Sensitive Urban Design Guide recognises biodiversity as an opportunity. I remain concerned that the BSU DG and the Territory Plan do not match up. The recent decision to call in a development which allows around 51 units on an environmentally sensitive area, despite Conservator advice not to build there, in the area on or near Bluetts Block, shows how difficult it is to integrate biodiversity considerations. We need our Territory Plan to line up with the BSUDG.

Improved District Strategies

- 1.22. Consultation on District Strategies highlighted strong community interest in the value of local character in shaping development and redevelopment, as districts respond to population growth. The District Strategies were seen as providing a start but that further work was required, with future changes intended to focus on potential urban regeneration areas particularly in strategic locations with proximity to local, group and town centres.
- 1.23. The Committee is proposing changes to the Territory Plan that could lead to greater intensity of use in RZ1 zones and higher densities in the other RZ zones. It recognised that if changes to the RZ1 zone were proposed that it was necessary to amend the District Strategies (Ree 12). I have recommended further upzoning than this. This upzoning could include, through block consolidation, the creation of precincts. In such instances, the Housing Design Guide and Urban Design Guide establishes a framework which will assist

proponents achieve high-quality design and place-based developments that are framed around green spaces.

- 1.24. If the Committee's recommendations are adopted, the District Strategies will need to be upgraded to better reflect what the communities believe is important about their neighbourhood and how this should guide future developments in their area. The Principles of Good Planning highlight that development needs to reflect local setting and context and respond to the existing character of the locality.
- 1.25. Such developments should be subject to consultation with the community on the climate and densification benefits of changes to allow block consolidation/amalgamations and low-rise densification up to certain limits (such as apartment and town house developments up to 3 or 4 storeys with shared green spaces in the middle). Based on community consultation, zoning amendments to the Territory Plan may be required. These should be implemented as a priority to allow higher density development in these areas.

Recommendations

Recommendation 1

- Review the Territory Plan to permit residential development in RZ1 zones consistent with the requirements for multi-unit housing in RZ2 zones with a maximum height limit of 2 storeys;
- Review the block consolidation policy to promote residential development in RZ1 zones consistent with the RZ2 settings.

Recommendation 2

Sell land to Housing ACT and community organisations at less than market value.

Recommendation 3

Ensure that native areas are protected upfront, not in a piecemeal way, and that areas with high environmental values not develop them, even if environmental offsets are available.

Recommendation 4

Review zoning in the Territory Plan to facilitate affordable, public and community housing on existing blocks which are being redeveloped.

Recommendation 5

Ensure that there are opportunities for ample greenspaces in areas subject to densification and those areas are refurbished to meet the needs of the local community so they provide opportunities for recreation, meeting and creating connections.

Recommendation 6

Amend the Territory Plan so it is in line with the Biodiversity Sensitive Urban Design Guide so that both documents aim to improve, restore and enhance biodiversity.

Recommendation 7

Review the District Strategies so that they establish a vision of what is important about the character of each District which can be used when developing, and assessing, future developments and planning proposals.

Ms Jo Clay MLA

7.03.2024

Appendix F: Additional Comments by Mr Mark Parton MLA

Changes to RZ1 zoning rules.

- 1.1. One of the most contested aspects of the new territory plan has been the changes to RZ1 rules, namely the relaxation of Dual Occupancy laws. I fear that the change in this space will not result in more than a handful of additional dwellings. My view is that because of the restriction in the size of the second dwelling and the overbearing LVC charges, it's not likely to be viable for many homeowners to proceed with a second dwelling. I'm also fearful that, despite this, the change in zoning laws will potentially result in an uplift to the unimproved value of all blocks above 800 m/sq, which would then lead to an increase in rates across the board. This increase in unimproved value would be despite the unviability of the dual occupancy redevelopment for most homeowners. Consequently, the biggest outcome of the RZ1 Dual Occupancy policy would not be an increase in the supply of dwellings, but rather a significant increase in government revenue.
- 1.2. If the RZ1 Dual Occupancy change did not limit the size of the second dwelling, other than the current planning guidelines, then it would actually deliver more dwellings. And therefore, I believe that we should have included as a recommendation.

Recommendation 1

I recommend that the government revise its RZ1 policy for developing parcels of 800 sqm or larger to:

- Include an option for allowing separate titling, and
- Remove the 120 sqm limit on additional residence.

Mark Parton MLA

7/3/24