The Standing Committee on Planning, Public Works and Territory and Municipal Services inquiry on Draft Variation 306 has the opportunity to restore some integrity to the ACT planning system by recommending that the elements of DV 306 not already regulating RZ2 redevelopment be rejected and ACTPLA be censured for the way it has conducted its review. ACTPLA has consistently refused to provide the information base and analysis necessary for the community, this Committee and the Assembly to assess whether many provisions of DV 306 should come into force.

My previous submissions on DV 303 and 306, which I am assured the Committee will take into account, canvassed ACTPLA's failure to evaluate the performance of current provisions, the failure to specify clear rationales for new and changed regulations, the failure to consider alternative ways of achieving policy objectives and the failure to assess impacts of the proposed changes.

Given these deficiencies, how can ACTPLA's approach throughout the DV 303/306 process be considered to accord with either

- the Government's commitment to the principles of 'Open Government', in particular transparency in information, or
- the Government's requirements for regulatory impact analysis?

The Consultation Report on DV 306 (March 2012) demonstrates yet again why the community can have no faith that ACTPLA/ESSD is capable of developing soundly based planning policy. A consequence of its lack of analytical rigour in DV 306 is exemplified, for example, in the statement:

> 'In relation to the key RZ2 provisions the submissions provide no clear direction because they express a range of views from strong support to strong opposition. As proposed, the RZ2 provisions strike the appropriate balance between redevelopment and the retention of neighbourhood character.' (Consultation Report, p. 16)

Instead of providing analysis to support its policy positions and inform community viewpoints, ACTPLA/ESSD asserts its proposals are best for the community because there is strong opposition for and against. The Standing Committee review of DV 306 should not endorse this nonsense as an underlying principle of public policy formulation in the ACT.

If DV 306 had included a proper review of the experience with the current regulatory regime for residential development, the community and the Committee would be less confident that ACTPLA knows best and that the proposed RZ2 provisions strike the appropriate balance between infill and retention of neighbourhood character.

This view is substantiated by the ACT Civil and Administrative Tribunal. It effectively showed that ACTPLA could ***not*** interpret the current RZ2 provisions correctly.

In June 2010 ACTPLA approved DA 200914418 involving the demolition of two houses on Belconnen Way, Weetangera, the amalgamation of the blocks and construction of five two storey attached units and a single storey detached unit at the rear. Three months later at the outset of the ACAT appeal on this decision, ACTPLA submitted that the six dwellings it had approved was an overdevelopment of the site and did ***not*** have sufficient regard to the RZ2 zone objectives. In particular, ACTPLA considered the development on the consolidated blocks should involve a maximum of four single storey dwellings.

I am unsure whether it is on the public record, but ACTPLA and the ACT Government (through the ACT Government Solicitor) acknowledge that after June 2010 policy regarding the appropriate level of development in the RZ2 zone changed and ACTPLA "heightened its consideration of the zone objectives in its assessment of the appropriate level of development in the RZ2 zone". This change in interpreting RZ2 requirements was a result of the ACAT decision in *BDH Projects v ACTPLA and Others* [2010] ACAT 37, particularly at paragraphs [65] and [66].

Such a significant change in RZ2 policy receives no mention (that I can find) in any of the DV 306 documentation.

A review of all relevant ACAT appeals and decisions on redevelopment issues should surely have been a prime source informing an assessment of the outcomes of current RZ2 provisions and possible changes to them.

Furthermore, ACTPLA has failed to provide any assessment of how well the outcomes from existing regulation achieve current zone objectives. For example, where has ACTPLA provided the community and this Committee with an evaluation of the extent to which current regulation has met the policy goals of creating a wide range of affordable housing and to meet changing community needs?

Casual observation of RZ2 redevelopment in our neighbourhood suggests redevelopment has not led to new dwellings anything close to the de facto affordability benchmark of $300,000 or so. How specifically does current and proposed regulation for the RZ1 to RZ5 zones contribute to national and ACT action plans on affordable housing? Further, a predominance of two storey dwellings *prime facie* suggests downsizing options for older Canberrans are not materialising in RZ2 redevelopments.

For another example, the promotion of sustainable water use is included in current zone objectives and is now to be accorded separate status in the revamped objectives for all zones.

Casual observation indicates the current Territory Plan is responsible for a large increase in <u>unmetered</u> water consumption for individual households in the ACT.

Unlike electricity and gas usage, residents of dual occupancies, multi unit developments etc are usually serviced by the one water meter. The Liberty complex bordering Thynne Street, Bruce, includes more than 50 substantial freestanding and attached dwellings and one water meter for all! The Water Technical area of ACTEW has confirmed that it has no data on the number of unmetered households in the ACT resulting from dual and multi unit redevelopment. When usage costs are averaged across all residents in redeveloped complexes, individual households have no incentive at the margin for water conservation. Can ACTPLA explain how DV 306 is considered to be consistent with the Government's water conservation objectives?

Turning to RZ2 specific matters, I would urge the Committee to reject the proposed reduction in the minimum block size for dual occupancy in RZ2 from 800m^2 to 700m^2. ACTPLA's discussion of RZ2 in the Consultation Report (hereafter, CR) contains seeming contradictions, misinformation and unsupported assertions.

ACTPLA asserts that the reduction to 700m^2 is "in keeping with the general approach to dwelling density in the RZ2 zone ie. a maximum of one dwelling for each 350m^2 of site area" (CR, p.4). This 350m^2 'rule' or 'guide' is news to me and I have been involved in a number of RZ2 matters. It would be also news to ACAT, which observed in *BDH Projects v ACTPLA and Others* [2010] ACAT 37 that "there is no definition of 'density' in the Territory Plan" [para 23] and that the "Territory Plan does not appear to identify a specific quantum of site density for the five residential zones" [para 29]. More recently, ACTPLA did not argue before ACAT that DA 200914418 should contain the 5 dwellings that this 'rule' would have amply allowed.

One issue for the Committee is whether ACTPLA has just concocted this 350m^2 rule-cum-guide and whether any participants in the review were aware of it. The Committee should pursue the obvious contradiction of this 'rule' with ACTPLA's discussion on 'expressing density' (CR, p. 116).

Further contradiction is evident when ACTPLA asserts:

> "The principle [sic] difference between RZ1 and RZ2 is not related to housing density. Rather, it is more to do with the nature and extent of change to the original pattern of housing development, and its neighbourhood character." (CR, p. 48)

If so, why in DV 303 did ACTPLA propose a reduction to 700m^2 for both RZ1 and RZ2 (as usual without supporting policy justification or impact analysis) but, again without support, revert to a 800m^2 minimum for RZ1 in DV 306 yet maintain the reduction for RZ2?

I also wish to draw the Committee's attention to ACTPLA's deliberately misleading claim that "DV 306 does not increase residential densities" (CR, p.48). ACTPLA supports its claim by referring to the proposed

dwelling density controls for multi unit redevelopment in RZ2 which it envisages will "in many cases" decrease the number of dwellings per RZ2 site compared to that currently permitted (CR, p. 15). But this relates to density on a given site not zone density.

ACTPLA consistently fails to acknowledge that the proposed reduction in the minimum block size for dual occupancy in RZ2 from 800m^2 to 700m^2 will significantly **increase the pattern of housing density** allowed in RZ2. The maths is not complicated. Under current provisions, there are 6,844 blocks available for dual occupancy. The DV 306 700m^2 minimum means that an additional 3,489 blocks in RZ2 would become available for dual occupancy, an increase of 51 per cent. (The scope for block consolidation complicates the picture but the bias is to greater not lesser intensive redevelopment.)

I would be grateful if the Committee could explain how the proposed reduction in the minimum block size for dual occupancy in RZ2 from 800m^2 to 700m^2 does not entail an increase in residential density in RZ2.

ACTPLA's claim that densities are not being increased in DV 306 is also false considering how it is shifting the goal posts in the proposed new specification of zone objectives. Furthermore, the the way zone objectives are being respecified and the fact that density is included in the first objective for each zone also contradicts ACTPLA's claim that density is not the principal difference between RZ1 and RZ2 (CR, p.48).

The Committee can verify this itself by comparing the current specification of zone objectives with the DV 306 final proposal.

RZ2 is a prime example. The current specification of RZ2 objectives does not mention density at all. As ACAT states in *BDH Projects v ACTPLA and Others* [2010] ACAT 37 (para 65), the intended density in RZ2 has to be inferred from the description of other zones. ACAT also pointed to Government statements on the low density nature of RZ2 at the time of the 2008 amendments to the Territory Plan.

ACTPLA now proposes that the first objective for RZ2 be:

> "Provide for the establishment and maintenance of residential areas where the housing is low rise and contains a mix of single dwelling and multi-unit development that is **low to medium density in character** particularly in areas close to facilities and services in commercial centres." [Emphasis added]

This effectively replaces the current RZ2 objective:

> Ensure that development addresses the street and the existing neighbourhood characteristics in scale, form and site development.

As ACAT pointed out, RZ2 currently lies between RZ1 – the nominated low density zone – and RZ3 – nominated as the zone of transition between low and high density areas. RZ4 is currently the nominated medium

density zone. So RZ2 is low density although with somewhat higher density allowed than RZ1 but certainly not medium density.

Instead of being a transition zone between low and high density areas, RZ3 would become 'predominantly medium density in character' under DV 306.

How can ACTPLA declare that intended residential densities in RZ2 and RZ3 are not deliberately being increased?

I submit that the Committee should reject the proposed re-specificications of the prime zone objectives and maintain their current wording or something equivalent.

Zone objectives need careful attention because of the way DV 306 creates interrelationships between 'desired character' and other elements of the regulatory structure. Zone objectives play a key role in reducing the stringency with which many of the non mandatory rules in the various planning codes are applied. For example, in the proposed Multi Unit Housing Development Code, 'rules' on the number of storeys, building heights and envelopes, boundary setbacks and encroachments, building separation, courtyard walls, car parking and co-location of parking spaces can all be sacrificed by applying the "consistency with desired character" test.

ACTPLA's portrayal of the interplay between non mandatory rules, desired character and decisions on DAs does not accord with practice. ACTPLA states:

> "When an applicant proposes a design solution that does not meet a particular rule, the onus is on the applicant to justify that departure in terms of the associated criterion. Depending on the criterion, this could involve justification on the grounds that the departure is 'reasonable' under the circumstances. It is then the responsibility of the ACT Planning and Land Authority to decide whether the departure is, in fact, reasonable." (CR, p.39)

The reality of DA assessment is very different. For example, rule 88 of the current *Residential Zones – Multi Unit Housing Development Code* provides a formula for determining the average area of private open space per dwelling. However, this rule is not mandatory and ACTPLA has discretion to decide if the dimensions for private open space proposed in a DA "suit the projected requirements of the dwelling's occupants".

How was this rule for private open space applied in the case of DA 200914418?

1. The developer asserted the DA "complies" with private open space rule 88.
2. ACTPLA calculated the required average POS as 137.9m^2 per dwelling.

3. ACTPLA calculated the proposed POS dimension for each unit as 204.07m^2, 95.65m^2, 37.66m^2, 37.28m^2, 37.25m^2 and 36.73m^2.
4. However, ACTPLA concluded:

> "The proposal does not meet the rule as the amount of private open space per dwelling for the front units 2 – 6 inclusive is nowhere near the 138m^2 required by the rule. However the private open space cannot be said to be inconsistent with the criterion as the space provided is of adequate quality and is sufficient for the urban style of housing proposed."

That is, the POS provision was deemed to have been met even though 4 of the 6 units proposed were nearly three-quarters less than the Code provided. ACTPLA rationalised the lack compliance of DA 200914418 with other non-mandatory rules in a similar fashion.

The Committee will probably have noticed the 'rules' for communal and private open space in the proposed Multi Unit Housing Development Code (rules 38, 39, 60 & 61) are not mandatory. The dimension and related conditions can therefore be sacrificed on the density altar, aka 'desired characteristics'.

I hope this demonstrates to the Committee the pervasive, and not immediately obvious, role that proposed changes to zone density specification will have on Canberra suburbs.

Many of the new provisions for RZ2 redevelopment controls have been operating since June 2011 through 'interim' effect. Some elements – such as controls on dwellings per block, number and separation of buildings, and block consolidation – rectify past mistakes in planning and would be supported by many RZ2 residents. However, enforcement of non mandatory rules for RZ2 redevelopment – such as maximum building height (R23), building envelope (R23), side and rear boundary setbacks (R30), the minimum 4 metre separation between buildings (R36), site open space (R38), building design (R52) and co-location of car parking (R84) – would remain at ACTPLA's whim.

In sum, I would urge the Committee to, at minimum, recommend maintaining the minimum block size for dual occupancy in RZ2 at 800m^2 and maintain the RZ2 zone objective as low density redevelopment.

It would be too much to expect that ACTPLA would explicitly acknowledge the adverse impacts past RZ2 controls have wrought on RZ2 neighbourhoods. Such an admission would not be beyond the scope of the Standing Committee on Planning, Public Works and Territory and Municipal Services.

Norm Gingell

3 June 2012