Table 1. Comments on 'Outline of the Territory Plan Restructure' (OTPR)

General topic	OTPR ref.	Comments
Sustainability	Part 1, What's new?, p.4	• strongly support the inclusion of sustainability principles (as in section 8 of the draft Bill) • the codes to be included in the Territory Plan need to be consistent with, and help give effect to, the above principles AND the Guiding Principles in the government's sustainability policy (*People Place Prosperity*) [see also comments below under *Zone objectives / policies* and *Codes*] • these principles need to be reflected more strongly within the Planning and Development Bill [see comments under the heading Sustainability in Table 2 of this submission]
Zones	Part 2, What's new?, p.5	
Parks and Open Space Zone	Table 1, p. 11	• Zone PR1 will need to include in its Objectives recognition of the contribution of such areas to wildlife corridors and the urban forest
Metropolitan Landscape Zone	Table 1, p. 11	• the new zone PR3 seems to downplay/ignore the nature conservation value/function of such areas
Zone objectives / policies	Part 2, What's new?, p.5, and sample zone objectives etc, pp15–18	It will be important that all R, C, I, B and T zones include objectives / policies that help give effect to sustainability principles and the guiding principles from the government's sustainability policy *People Place Prosperity*. For example • the last policy in the Sample Zone Residential R1 (OTPR p. 16) needs to be revised to "To promote energy <u>conservation and</u> efficiency, and conservation and sustainable water use in subdivision planning, building design and construction" to make it better give effect to prudent use of resources • a similar policy needs to be included for all R, C, I, B and T zones • the sample policies for Rural Villages Precinct (OTPR p. 18) make no reference to energy or water conservation. As part of their development and further consultation on the zones, it is also important that there be scope to change existing objectives/policies to improve their focus on sustainability.
		Given the context that the zone objectives and policies provide for the assessment tracks and how future development applications will be handled, extensive consultation on the zone objectives and policies, with ACT Government agencies as well as the community, is critical.
Assessment Tracks	Part 2, What's new? and Figure 3: Assessment Tracks, p. 5	Schedule 4 of the *Planning and Development Bill 2006* provides clarity about the 'criteria' used to distinguish between activities that relate to merit assessment and impact assessment. There is no similar clarity about why particular activities are to be assigned to code assessment or merit assessment. • for transparency, the general criteria used to include/exclude activities in/from the Code assessment track need to be articulated (either in the Territory Plan or in the Planning and Development Bill).

General topic	OTPR ref.	Comments
Codes	Part 3 Codes	It is important that all the codes help to give effect to the Guiding Principles in the government's sustainability policy. For example, in the sample House Code: • the intent of the code (OTPR p. 19) needs to ensure house design that maximises water conservation and water use efficiency and energy conservation (in addition to energy efficiency). As part of the development of, and further consultation on the codes, it is important that there be scope to change existing codes to improve their focus on sustainability.
		Extensive within-government and community consultation on the codes will be critical because: under S109 of the exposure bill, Code track developments are not referred to government entities; S82(2)(b) of the exposure bill proposes no further consultation will be required if the codes are to be varied; and S109 of the exposure bill proposes there be no right of review for activities under the Code track.
		S107(1)(a) of the exposure bill refers to the possibility of various code requirements for a proposal being inconsistent—every effort should be made, during the development of the codes, towards ensuring they are consistent in the first place.
		There needs to be a commitment to review the codes after the first 12–18 months of their operation (to check their appropriateness and assess any unanticipated consequences) and periodic subsequent reviews.

Table 2(a). Comments on the *Planning and Development Bill 2006* — General comments

General Topic	Exposure bill ref.	Comments
Sustainability		The Bill warrants strengthening to better include sustainability and provide greater transparency about where, and how, the sustainability principles it articulates (S8, pp 5 & 6, Meaning of sustainable development) are to be addressed in decision-making under the Act. The following changes would help achieve this.
	Section 6(a), p. 4, Main object of Act	• reword the main object of the act, because as currently stated the object is not necessarily consistent with the sustainability principles listed in S8 of the exposure bill (because the social, environmental and economic aspirations of the people of Canberra may be inconsistent with the sustainability principles).
	S11(3)(a), p. 9:	• reword as "The planning and land authority must exercise its functions … in a way that ~~has regard~~ <u>gives effect</u> to sustainable development; and" (i.e. adopt the wording used in s. 48(2), p. 32)
	Chapter 4, part 4.1, p. 23	• insert a new subsection "The land development agency must exercise its functions in a way that gives effect to sustainable development."
	Chapter 4, S42(2), p. 29	• broaden the disciplines and areas of expertise listed to include "the environment" (this is needed to allow the board to better consider sustainability issues)
	S86, p. 63, Estate development plan	• add a new subsection 86(4) along the lines "An estate development plan must take account of the sustainability principles and current information relevant to them."

General Topic	Exposure bill ref.	Comments
Sustainability ctd	Part 5.6, Planning reports and strategic environmental assessments	• need to specify that both the planning reports and the strategic environmental assessments must examine how they will help give effect to sustainability principles
	S97, p.71, Planning strategy and S99, p. 71, Main object of planning strategy	• reword the main object of the planning strategy, because the social, environmental and economic aspirations of the people of Canberra may not be consistent with the sustainability principles listed in S8
	S111(2)(b), Merit track	• add "the decision is consistent with the sustainability principles."
	S112, p. 81, Merit track	• add "(g) sustainability principles"
	S119(2)(b), p. 86, Impact track	• add "the decision is consistent with the sustainability principles."
	S120, p. 87, Impact track	• add "(i) sustainability principles"
	S147(2)(e) re Minister deciding referred development applications	• include reference to sustainability e.g. "the grounds for the decision, including how the Minister applied the sustainability principles."
Social impacts		The merit and impact tracks are the key mechanisms for assessing environmental impacts. While they specifically refer to impacts relating to the natural and built environments (e.g. S112(f), S120(f)), there is no explicit reference to impacts on individuals/the community. "Environment" and "Built environment" are not defined in the exposure bill. "Natural environment" is defined, using the definition from the *Nature Conservation Act 1980*, ACT. The act needs to be more transparent about covering social impacts; this could be achieved by inserting • the definition of environment contained in Section 4(1) of the *Environment Protection Act 1997*, ACT, (which clearly includes people as part of the environment) into the Planning and Development Act's Dictionary • adding specific references to social impacts (see *Merit track approval* and *Impact track* in Table 2(b) following)

General Topic	Exposure bill ref.	Comments
Third party rights		Government needs to ensure that all the necessary ‘checks and balances’ have been addressed with respect to third part rights relating to review of decisions, for example: • as there is no public notification of development applications proposed under the Code track (and hence no third party rights of review; see S109), it is critical that there be wide public education about and consultation on the draft codes to ensure that all ‘material detriment’ issues are debated prior to the codes being finalised • for Merit track development applications, a mechanism is needed to allow representations concerning potential legitimate material detriment of entities on <u>non</u>-adjoining premises; the exposure bill currently requires, for most merit applications, only public notification of proposals through written notice for adjoining premises.

Table 2(b). Comments on the *Planning and Development Bill 2006* — Specific comments

Topic in Bill	Exposure bill ref.	Comments
Purchase of documents	S61(1)(a), p.43 and S64(1), p.46	• where possible, documents should be available free to the public (e.g. over the web)
Variations of a Territory Plan, Public consultation	S64(3), excluded bits in a document, p. 46	• where part of a document is excluded “in the public interest”, some further explanation of the reasons for the is warranted
Minister consideration of Legislative Assembly committee recommendations	S73 (3)(a), p. 53	This section indicates that the Minister can ignore any recommendation made to him/her by a committee arising from S70(3), i.e. when a committee considers a draft plan variation <u>not</u> referred by the Minister. • the Minister should be required to consider these recommendations.
Technical amendments to the territory plan	S82(b)(i), p. 60	Given that all the codes will be subject to consultation in the first place (implied in Outline of the Territory Plan Restructure document), it is undesirable for subsequent changes to be made to a code without the need for further consultation • the Act should differentiate between minor and major adjustments (with criteria for how they’re distinguished) and require consultation (at least with relevant government entities) for significant changes
Estate development plan	S86, p. 63 specifies the contents of an estate development plan	• strengthen re sustainability—see *Sustainability* in Table 2(a) above

Topic in Bill	Exposure bill ref.	Comments
Strategic environmental assessment	Part 5.6, pp 65, 66	• these are significant documents, so public comment on them should be required
Review of Territory Plan	S95, p. 68, Review of territory plan	• there should be a requirement for public comment as part of such reviews, especially given the potential for conflict between 94(2)(d) and 94(2)(f). [Note: public consultation would be addressed if it was made a mandatory requirement for the preparation of strategic environmental assessments (as an SEA must be prepared as part of the territory plan review)]
Code track	S109, p. 78	• for transparency, it is important to specify the criteria/principles used for assigning things to the Code track and ensuring wide within-government and public consultation on them [See also Codes in Table 1 above]
Merit track approval	S111(2), p. 80	This section implies that the approving person can ignore some referral advice (e.g. the Conservator's advice relating to matters other than a registered tree or declared site) and ignore the fact that realistic alternatives may exist (S111(2)(a)(ii)) — this appears to be bad policy in relation to environmental protection. • the approving person should be required to take account of all advice provided by each referral entity and not ignore the existence of realistic alternatives • the approving person should be required to show how s/he has responded to each element of advice given and give reasons why s/he may not have adopted the advice (especially where realistic alternatives exist)
	S111(2)(b)	• strengthen re sustainability—see *Sustainability* in Table 2(a) above
	S112, p. 81	• strengthen re sustainability—see *Sustainability* in Table 2(a) above
	S112, p.81	As currently worded, this section gives no explicit sense that the Merit track takes social impacts into account • suggest insert either a new subsection referring to social impacts or reword an existing subsection (e.g. subsection (f)).
Impact track	S115, p. 82 and schedule 4, pp 316–26, Impact track applicability	See comments below under *Development proposals requiring an EIS*
	S116(1), p. 83, Ministerial discretion to apply impact track to a development proposal	• it should be obligatory for the Minister to declare the impact track <u>will</u> apply (i.e. use 'must' instead of 'may') for any activity that poses a risk of significant adverse environmental impact. This is especially critical for any development proposal that poses a risk of significant adverse impact on a threatened species or ecological community that has been listed under the *Nature Conservation Act 1980* (ACT) and/or the *Environment Protection and Biodiversity Conservation Act* 1999 (Commonwealth).
	S116(4)(b)(i), p.83, significant impacts	• this subsection also needs to encompass <u>frequency</u> of an impact (i.e. "the kind, size, frequency, intensity, scope and length of time of the impact")
	S116(4), Note, Minister may publish guidelines, p.84	• if the Minister decides to publish guidelines about how s/he would exercise power under this section, it should be specified that the Minister must involve relevant government referring entities in the process of developing the guidelines

Topic in Bill	Exposure bill ref.	Comments
Impact track ctd	S119(2)(a)(iii), p. 86	This section implies that the approving person can ignore some referral advice (e.g. the Conservator's advice relating to matters other than a registered tree or declared site) and ignore the fact that realistic alternatives may exist (S119(2)(a)(iii)) — this appears to be bad policy in relation to environmental protection. • the approving person should be required to take account of all advice provided by each referral entity and not ignore the existence of realistic alternatives • the approving person should be required to show how s/he has responded to each element of advice given and give reasons why s/he may not have adopted the advice (especially where realistic alternatives exist)
	S119(2)(b), p. 86	• strengthen re sustainability—see *Sustainability* in Table 2(a) above
	S120, p. 87	• strengthen re sustainability—see *Sustainability* in Table 2(a) above
	S120, p. 87	As currently worded, this section gives no explicit sense that the Impact track takes social impacts into account • suggest insert either a new subsection referring to social impacts or reword an existing subsection (e.g. subsection (f)).
Exempt development proposals	S124(2), p.89	See comments on draft exemptions list in Table 3 below
Development application requirements	S128, Note 1, p. 95	This note implies there are instances where a development application in the impact track does <u>not</u> require an EIS: • there needs to be clarity in the act about who would make this decision and who would be consulted as part of the decision • the reasons for such a decision would need to be transparent
Development application referrals	S137(1), p.102	This subsection indicates that ACTPLA need only refer an application prescribed by regulation to an entity prescribed by regulation. For clarity and to provide certainty at the time the bill is enacted: • this part of the bill needs to list those entities (e.g. the Conservator) or types of entities (e.g. agencies responsible for heritage, environmental protection) that must have matters referred to them • it would also be useful to include some sense of the general types of applications that will be referred (even if the detail goes into a subsequent regulation)
Period for entity to give advice	S138(2), p.103	This subsection indicates ACTPLA is able to prescribe, by regulation, a period <15 days for the provision of advice by a referral entity. • the subsection should be removed: if there is some reason for the authority needing advice earlier than 15 days, this should be negotiated with the referral entity on a case-by-case basis
Public notice to adjoining premises	S141(4)(a), p.108	This subsection indicates that ACTPLA need not give public notice if it considers it impractical to give notice by post because there is a large number of adjoining places—this appears to imply that there is no requirement for any public notification in such situations • a subsection needs to be added stating that ACTPLA must make a 'reasonable effort' to notify adjacent places (e.g. through notices on the premise subject to the development application, public notices in newspapers etc).

Topic in Bill	Exposure bill ref.	Comments
Public notice to adjoining premises ctd	S141(4)(a) and (b) and Note, Exemption from notification, p.108	• the act needs to include a subsection that indicates those circumstances that will be considered sufficient to warrant an exemption (through regulation) from public notice
	S141(5), validity of development approval, p.108	• given that the validity of a development approval is not affected by ACTPLA failure to comply with notification requirements, it is even more important to specify that ACTPLA must always make ‘reasonable effort’ to notify people, and be required to give reasons where they have failed to comply
Major public notification	S142 Note, Exemption from notification, p.109	• the act needs to include a subsection that indicates those circumstances that will be considered sufficient to warrant an exemption (through regulation) from public notice
	S142(5), validity of a development approval, p.110	• if the validity of a development approval is not affected by ACTPLA failure to comply with notification requirements, it is important to include a subsection that specifies ACTPLA must always make ‘reasonable effort’ for major public notification, and be required to give reasons where they have failed to comply
Representations about development applications	S143, p. 110	• although anyone making a representation about a development application in the assessment track can presumably also comment on the EIS, this is not not actually specified, and needs to clarified/made explicit
Minister decides referred development applications	S147(2)(e), p. 113	• strengthen re sustainability—see *Sustainability* in Table 2(a) above
Conditional approvals	S150(3), pp 116–7	• this subsection need to explicitly include among its examples a condition to prevent or minimise adverse impacts on people/the community
Notice of decision on development applications	S157(3), notice on referred development application, p.125	• this subsection needs to be deleted: it is important that the referral entity be given reasons why any of its advice is not followed, including those matters which ACTPLA considers are not relevant to the application
	S158(2)(b), notice if representation by 2 or more people, p.125	The requirement that notice only needs to be given to one of the potentially many people who have made a representation is illogical—it appears to assume a connection between all the people who have made a representation, even though this may not be the case—and unjust • the wording needs to be changed to indicate that ACTPLA must make a reasonable effort to notify the range of people/interest groups who have made representations
Reconsideration of DAs for approval	S174(3), p. 138	• this subsection needs to include a requirement for ACTPLA to seek advice from any referral entity from whom it sought advice with respect to the original application, or, for a relevant entity’s advice to be newly sought if new information warrants it
Environmental impact statements	S185, EIS prescribed by regulation, p. 149	• this section needs to require the involvement of government referral entities (e.g. the Conservator, the EPA) in prescribing the content of an EIS in a regulation
	S187(3), Scoping document, p. 150	• this section need to require the involvement of government referral entities (e.g. the Conservator, the EPA) in developing the minimum content for a scoping document

Topic in Bill	Exposure bill ref.	Comments
Environmental impact statements ctd	S188(1)(a)(i), p. 150, draft scoping document for EIS	• where possible, documents should be made available free to the public (e.g. over the web)
	S191(2), finalising the scoping document after end of public comment period	• for transparency, ACTPLA should be required to indicate, for those matters raised in representations and not to be included in an EIS, the reasons for their exclusion
List of EIS consultants	S197, specifications re ACTPLA preparation of list, p. 155	• to ensure public confidence in the list of EIS consultants, ACTPLA should be required: o to specify criteria against which consultants will be assessed re inclusion in/exclusion from the list o to seek advice from government referral entities with regard to the appropriateness of the consultants expertise in relation to the referral entity's responsibilities (eg heritage, threatened ecological communities, aquatic ecology etc) • there would be value in including a clause indicating the list must be reviewed on a regular basis
Development proposals requiring an EIS	Schedule 4, Part 4.1, definitions, pp 316–7	Although Part 4.3 refers to "significant" impacts, "significant" is not included in the definitions in Part 4.1. • it would be helpful for a cross reference to be made in this section to the definition of significant in S116(4)(a)
		• the definition of "biodiversity corridor" warrants broadening to recognise the wildlife habitat corridor value of urban open space
	Schedule 4, Part 4.3, Item 6, p.325	• item 6 should also capture development activities that will have a significant adverse impact on water flow regimes and water quality (i.e. not just activities that affect water quantity)
Management of public land	S286(c), p. 219	• the written report about consultation on the plan should also include an explanation of how those comments have been addressed (or not) in the draft plan and why (i.e. similar to final bit of S286(b))
Management of public land ctd	288(2), p. 220	• in considering any recommendations from a Legislative Assembly committee, the Minister should be required to give reasons where the Minister has not adopted a committee recommendation
Management objectives for public land	Schedule 3, Item 7, urban open space, p. 315	• the management objectives for urban open space need to be broadened as follows: o "to provide habitat, and habitat connectivity, for fauna and flora" o "to provide for urban forest"

Topic in Bill	Exposure bill ref.	Comments
Regulations	S380, p. 288, Regulation-making power	This section gives the Executive the power to make regulations under the Act; more regulations are referred to in other parts of the exposure bill than indicated under sections 380(2) and (3). As some regulations will be key documents in their own right (e.g. minimum content of a strategic environment assessment; EIS content; minimum content for EIS scoping document), there is a need for transparency and certainty about the process used to develop them. • a new subsection should be inserted that specifies the minimum requirements for the process of developing key regulations; the minimum requirements should include o a mandatory requirement to involve government referral entities o criteria for when public comment will be sought

Table 3. Comments on "Proposed list of buildings and structures exempt from requirements to obtain Development Approvals under the Planning and Development Bill"

Topic	Ref.	Comments
Destruction of native vegetation exemption	Item 4(e) and 51(c): "the development will not result in the substantial clearing of 0.5 ha or more of native vegetation"	It is inappropriate to include this as an exempt activity because of the potential adverse impacts of such clearing (dependent on location) e.g. on the contribution of the vegetation to wildlife corridors, or as buffers or rehabilitation areas for endangered species habitat / ecological communities. The exemption could also cause significant areas of vegetation clearance where such activities are contiguous. • this item should be removed from the exempt list