

STANDING COMMITTEE ON PLANNING, PUBLIC
WORKS AND TERRITORY AND MUNICIPAL SERVICES

Draft Variation to the Territory Plan No. 306
Residential development, estate
development and leasing codes

SEPTEMBER 2012

Committee membership

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Resolution of appointment

On 9 December 2008¹, the ACT Legislative Assembly agreed by resolution to establish general purpose standing committees to inquire into and report on matters referred to it by the Assembly or considered by the committee to be of concern to the community, including:

(e) a Standing Committee on Planning, Public Works and Territory and Municipal Services to examine matters related to planning, land management, proposed capital works projects in the public sector, including works undertaken by territory owned corporations, municipal transport services, heritage and sport and recreation.

The Assembly also agreed:

6 (3) If the Assembly is not sitting when the Standing Committee on Planning has completed consideration of a report on draft plan variations referred pursuant to section 73 of the *Planning and Development Act 2007* or draft plans of management referred pursuant to section 326 of the *Planning and Development Act 2007* the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

Terms of reference

In relation to a draft plan variation to the Territory Plan, section 73 (2) of the *Planning and Development Act 2007* states:

The Minister may, not later than 20 working days after the day the Minister receives the draft plan variation, refer the draft plan variation documents to an appropriate Committee of the Legislative Assembly together with a request that the Committee report on the draft plan variation to the Legislative Assembly.

¹ Legislative Assembly for the ACT, *Minutes of Proceedings* No. 2, 9 December 2008, pp. 14–18, accessible at <http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>.

Acronyms and abbreviations

ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority ²
Act, the	The <i>Planning and Development Act 2007</i> (ACT)
AIA	Australian Institute of Architects
AILA	Australian Institute of Landscape Architects
Assembly, the	The ACT Legislative Assembly
Authority, the	The Planning and Land Authority
Committee, the	The Standing Committee on Planning, Public Works and Territory and Municipal Services
CSC	Customer Service Centre
Cwlth	Commonwealth
DAF	Development Assessment Forum
Directorate, the	The Environment and Sustainable Development Directorate
DV	Draft Variation to the Territory Plan
EDC	Estate Development Code
EDP	Estate Development Plan
ESD(D)	Environment and Sustainable Development Directorate
GFA	Gross Floor Area
GNCA	Griffith / Narrabundah Community Association
HIA	Housing Industry Association
ISCCC	Inner South Canberra Community Council
LVC	Lease Variation Charge
MBA	Master Builders Association of the ACT
Minister, the	Minister for the Environment and Sustainable Development ³
MLA	Member of the ACT Legislative Assembly
MUHDC	Multi Unit Housing Development Code

² In 2011, the functions of ACTPLA were transferred to the Minister for the Environment and Sustainable Development – see Administrative Arrangements 2011 (No 3) accessible at <http://www.legislation.act.gov.au/ni/2011-712/current/pdf/2011-712.pdf>. The Planning and Land Authority, which is the Chief Planning Executive, remains a separate statutory position within the Environment and Sustainable development Directorate.

³ References to the Minister in the *Planning and Development Act 2007* refer to the Minister responsible for planning matters, currently the Minister for the Environment and Sustainable Development.

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NI	Notifiable Instrument
PIA	Planning Institute of Australia (ACT Chapter)
Plan, the	The Territory Plan
RSDC	Residential Subdivision Development Code
RZ1	RZ1 – Suburban Zone
RZ2	RZ2 – Suburban Core
RZ3	RZ3 – Urban Residential Zone
RZ4	RZ4 – Medium Density Residential Zone
RZ5	RZ5 – High Density Residential Zone
SDHDC	Single Dwelling Housing Development Code
WCCC	Weston Creek Community Council
WVCC	Woden Valley Community Council

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RECOMMENDATIONS

RECOMMENDATION 1

1.14 The Committee recommends that Draft Variation to the Territory Plan No 306 proceed subject to the recommendations set out in this report.

RECOMMENDATION 2

1.15 The Committee recommends that the Planning Committee of the 8th Legislative Assembly of the ACT consider revisiting some or all of the issues raised during the inquiry into DV306.

RECOMMENDATION 3

4.20 The Committee recommends that the Environment and Sustainable Development Directorate monitors the impact on solar access of structures that don't require approval, and amend requirements if necessary.

RECOMMENDATION 4

4.36 The Committee recommends that the Environment and Sustainable Development Directorate considers changes which would make development to one edge of the block more feasible so as to eliminate wasted strips of land at both edges of blocks.

RECOMMENDATION 5

5.35 The Committee recommends that the Environment and Sustainable Development Directorate reconsiders RZ2 changes to make them more consistent with the goals of affordable housing and urban infill.

RECOMMENDATION 6

6.14 The Committee recommends that the Environment and Sustainable Development provides for all future variations (a) a Consultation Report which identifies each of the concerns raised and responds to each individually so that it is clear to submitters and the Committee what changes have been made in response to particular concerns and if changes have not be made, the reasons why, and (b) a comparative table which details the relevant current provisions of the Territory Plan, the proposed changes and the basis for making the change.

RECOMMENDATION 7

6.16 The Committee recommends that the Environment and Sustainable Development Directorate includes with its future draft variation consultation reports, an index listing the submission number and organisation/individual who made the submission.

RECOMMENDATION 8

6.19 The Committee recommends that the Territory Plan be published electronically in a number of formats, with hyperlinks for ease of understanding.

RECOMMENDATION 9

8.18 The Committee recommends that proposed mandatory Rules 22 and 23 of the Residential Zones Development Code include associated criteria to remove the requirement for a secondary residence car parking space, while ensuring that the dwelling design allows for any future car parking needs to be met.

RECOMMENDATION 10

8.26 The Committee recommends that the Government provides advice on the likely application of the Lease Variation Charge to secondary residences as a matter of urgency.

RECOMMENDATION 11

10.27 The Committee recommends that community consultation on precinct codes should commence as soon as possible.

RECOMMENDATION 12

10.29 The Committee recommends that as part of developing precinct codes, the objectives of the various zones should be clarified and standardised.

RECOMMENDATION 13

10.31 The Committee recommends that the definition of 'desired character' should be future looking to equip the suburb for anticipated changes.

RECOMMENDATION 14

11.9 The Committee recommends that the Environment and Sustainable Development Directorate articulates the reason for unit titling restrictions on dual occupancies in RZ1.

RECOMMENDATION 15

11.30 The Committee recommends that the Environment and Sustainable Development Directorate issues an explanation of how DV 306 supports 50/50 infill and greenfield development, housing affordability and the ACT's greenhouse gas reduction target.

RECOMMENDATION 16

11.60 The Committee recommends that the Environment and Sustainable Development Directorate introduces a sliding scale for plot ratios for large blocks (greater than 500m²).

RECOMMENDATION 17

11.62 The Committee recommends that the Environment and Sustainable Development Directorate considers increasing the minimum block size where integrated development is not required.

RECOMMENDATION 18

11.63 The Committee recommends that the Environment and Sustainable Development Directorate reviews the interaction of plot ratio and plot size to eliminate anomalies.

RECOMMENDATION 19

11.75 The Committee recommends that the previous flexibility applying to the design of facilities and spaces covered by community title schemes be retained.

RECOMMENDATION 20

11.80 The Committee recommends that a minimum quantity of biologically active, permeable or green space be required on all blocks.

RECOMMENDATION 21

11.82 The Committee recommends that the ACT Government reviews nature strip requirements to ensure adequate provision of street trees.

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1 INTRODUCTION

Conduct of the inquiry

- 1.1 On 23 March 2012, pursuant to subsection 73(2) of the *Planning and Development Act 2007*, the Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA, referred draft variation to the Territory Plan No. 306 – Residential development, estate development and leasing codes (DV306) to the Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee) for consideration and report to the ACT Legislative Assembly (the Assembly).
- 1.2 An invitation for public submissions to the Committee was advertised in *The Chronicle* on Tuesday, 10 April 2012 and *The Canberra Times* on Saturday, 14 April 2012. The Committee also wrote to a range of stakeholders, inviting them to make submissions. The closing date for submissions was 1 June 2012. The Committee received 21 submissions (see Appendix A).
- 1.3 The Committee also considered the submissions lodged as part of the planning and land authority's statutory consultation process on the May 2011 exhibited version of DV306⁴.
- 1.4 Officials from the Environment and Sustainable Development Directorate (the Directorate) provided the Committee with two briefings on DV306 on 17 and 24 April 2012. A copy of the transcripts of the briefings and accompanying PowerPoint presentations were subsequently authorised for publication by the Committee and are available on the Committee's website, along with the transcripts from the public hearings.
- 1.5 The Committee also held seven public hearings and heard from 43 witnesses (see Appendix B).

⁴ See Notifiable Instrument (NI) 2011-273, accessible at <http://www.legislation.act.gov.au/ni/2011-273/default.asp>.

- 1.6 Documents provided during the hearings are also available on the Committee's website (see Appendix C).
- 1.7 At the invitation of the Master Builders Association of the ACT (MBA), the Committee undertook a site visit at the new suburb of Wright in the Molonglo Valley on 6 September 2012.

Acknowledgments

- 1.8 The Committee would like to thank Directorate officials for their time in briefing the Committee, and appreciated the opportunity to discuss with them the draft variation and the community consultation process that had already been undertaken by the Directorate.
- 1.9 The Committee would also like to thank the President of the MBA, Mr Ross Barrett OAM, President, Master Builders Association of the ACT (MBA), Mr John Miller, MBA Executive Director, and architects Mr Glen Dowse, Mr Tim Johnston and Mr Alastair MacCallum, for their time and expertise during the site visit.
- 1.10 The Committee would especially like to thank all of the submitters and witnesses who gave their time and expertise to this inquiry. While this report provides only a snapshot of the Committee's inquiry, the evidence presented in submissions, at the public hearings and in documents provided to the Committee, also comprises a valuable body of information that will assist the Minister in determining the final form that variation No. 306 will take.

Scope of the report

- 1.11 Given the extensive range of issues included in DV306, the Committee was only able to focus on the key issues raised during its inquiry, as follows:
- solar access (chapter 4);
 - redevelopment in the residential suburban core (RZ2) (chapter 5);
 - accessibility of the DV306 documentation (chapter 6);
 - the draft variation consultation process (chapter 7);
 - secondary residences (chapter 8);

- interpreting 'desired character, and other terms (chapter 9); and
 - neighbourhood plans and precinct codes (chapter 10).
- 1.12 The Committee is of the view that, on balance, DV306 provides a considered response to the need for improved solar access and concerns about the extent and scale of multi-unit redevelopment in RZ2.
- 1.13 The Committee notes that the Government has stated that the revised zone objectives attempt to more clearly articulate the character of the different zones and provide a balance between ensuring that redevelopment does not drastically alter the character of existing suburbs but still allows for gradual change necessary for the sustainable growth of the city.

RECOMMENDATION 1

- 1.14 **The Committee recommends that Draft Variation to the Territory Plan No 306 proceed subject to the recommendations set out in this report.**

RECOMMENDATION 2

- 1.15 **The Committee recommends that the Planning Committee of the 8th Legislative Assembly of the ACT consider revisiting some or all of the issues raised during the inquiry into DV306.**

4 **STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND
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2 PLANNING IN THE AUSTRALIAN CAPITAL TERRITORY

- 2.1 This chapter outlines the planning framework in the Australian Capital Territory (ACT) and describes the historical context within which Draft Variation to the Territory Plan No 306 – Residential development, estate development and leasing codes (DV306) sits. It briefly outlines the evolution of the Territory Plan (the Plan) from its inception, through early reviews and restructures, to the present day review of the policy content of the Plan.
- 2.2 The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth) sets out the overarching legal framework for the planning of, and management of the land in, the Australian Capital Territory.⁵ It establishes the National Capital Authority, one of the functions of which is to prepare and administer a National Capital Plan.⁶ The objective of the National Capital Plan is to ensure that Canberra and the Territory are planned and developed in accordance with their national significance.⁷
- 2.3 The *Australian Capital Territory (Planning and Land Management) Act 1988* also provided for the ACT Legislative Assembly to make laws to establish a Territory planning authority, and to confer on that authority the function of preparing and administering a Territory Plan.⁸ These requirements were incorporated into the *Interim Planning Act 1990* (ACT)⁹ and subsequently, with expanded environmental assessment and heritage provisions, into the *Land (Planning and Environment) Act 1991* (ACT).¹⁰
- 2.4 In 2008, as part of the reform of the ACT planning system, the *Land (Planning and Environment) Act 1991* was replaced by the *Planning and Development*

⁵ Accessible at http://www.comlaw.gov.au/Details/C2012C00035/Html/Text#_Toc310442932.

⁶ *Australian Capital Territory (Planning and Land Management) Act 1988*, section 5.

⁷ *Australian Capital Territory (Planning and Land Management) Act 1988*, section 6.

⁸ *Australian Capital Territory (Planning and Land Management) Act 1988*, section 25.

⁹ Accessible at <http://www.legislation.act.gov.au/a/1990-59/19910312-4997/pdf/1990-59.pdf>.

¹⁰ Accessible at <http://www.legislation.act.gov.au/a/1991-100/default.asp>.

Act 2007 (the Act),¹¹ which includes the provision for the Planning and Land Authority (the Authority)¹² and the Territory Plan.¹³

- 2.5 The object of the Territory Plan is to ensure that, in a manner not inconsistent with the National Capital Plan, 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.¹⁴
- 2.6 Under section 50 of the Act, the 'Territory, the Executive, a Minister or a territory authority must not do any act, or approve the doing of an act, that is inconsistent with the territory plan'.
- 2.7 The Act requires the Territory Plan to set out the planning principles and policies for achieving its objective in a way that gives effect to sustainability principles, including policies that contribute to achieving a healthy environment in the ACT.¹⁵
- 2.8 The Territory Plan includes:
- a statement of strategic directions;
 - a map;
 - objectives and development tables applying to each zone;
 - a series of general, development and precinct codes; and
 - structure plans and concept plans for the development of future urban areas.¹⁶
- 2.9 The Territory Plan graphically represents the applicable land use zones under the following categories:
- Residential;
 - Commercial;
 - Industrial;

¹¹ Accessible at <http://www.legislation.act.gov.au/a/2007-24/current/pdf/2007-24.pdf>.

¹² *Planning and Development Act 2007*, section 10.

¹³ *Planning and Development Act 2007*, section 46.

¹⁴ *Planning and Development Act 2007*, section 48.

¹⁵ *Planning and Development Act 2007*, section 49.

¹⁶ *Planning and Development Act 2007*, section 51.

- Community Facility;
 - Urban Parks and Recreation;
 - Transport and Services; and
 - Non-Urban.¹⁷
- 2.10 Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, prepared by the Authority for stakeholder comment.¹⁸ There can be a number of versions of a draft plan variation depending on the consultation program.
- 2.11 Under the Act the Minister¹⁹ has the discretion to refer a draft plan variation, within 20 working days of receiving it,²⁰ to an appropriate committee of the ACT Legislative Assembly (the Assembly) for consideration and reporting.²¹
- 2.12 The Minister must not take action in relation to the draft plan variation until the committee of the Assembly has reported on it;²² unless the committee has not reported on the draft plan variation by the end of the period of six months starting the day after the day on which it was referred.²³
- 2.13 The Minister may take any recommendation of the committee into account before making his decision in relation to the draft plan variation.²⁴ If the Minister approves it, the proposed plan variation and associated documents will be presented to the Assembly.²⁵ Unless wholly or partially rejected by the Assembly on a motion for which notice has been given within five sitting days

¹⁷ See NI2008-27, accessible at <http://www.legislation.act.gov.au/ni/2008-27/current/default.asp>.

¹⁸ *Planning and Development Act 2007*, section 60.

¹⁹ The minister responsible for administering the provisions of the *Planning and Development Act 2007*, currently the Minister for the Environment and Sustainable Development – see section 162 of the *Legislation Act 2001* (ACT).

²⁰ Under section 70 of the *Planning and Development Act 2007*, the planning and land authority must prepare a public availability notice advising that draft variation documents, which have been provided to the minister, are available for public inspection. This notice, which is a notifiable instrument, may be accessed via the ACT Legislation Register website at <http://www.legislation.act.gov.au/>.

²¹ *Planning and Development Act 2007*, section 73. The Standing Committee on Planning, Public Works and Territory and Municipal Services is currently the appropriate committee.

²² *Planning and Development Act 2007*, section 74.

²³ *Planning and Development Act 2007*, section 75.

²⁴ *Planning and Development Act 2007*, subsection 76(4).

²⁵ *Planning and Development Act 2007*, section 79.

of its presentation, the plan variation will commence on the date nominated by the Minister.²⁶

- 2.14 If the Minister does not refer a draft plan variation to an appropriate committee of the Assembly, the relevant committee is not prevented from considering the draft plan variation documents.²⁷

Draft Variations No. 301 and No. 303

- 2.15 Draft Variation to the Territory Plan No. 301 – Estate Development Code (DV301) was released for public consultation on 17 June 2010. The purpose of DV301 was to review the existing Residential Subdivision Development Code and include provisions for assessing Estate Development Plans (EDPs) for commercial and industrial zones. Comments were due by 14 August 2010.²⁸
- 2.16 Draft Variation to the Territory Plan No. 303 – Residential Zones Development Codes and Lease Variation General Code (DV303) was released for public consultation on 24 June 2010 with comments due by 23 August 2010. The purpose of DV303 was to revise the residential zones objectives; revise and replace the residential zones development tables, replace the current Single Residential Housing Development Code and Multi Unit Housing Development Code with new versions; introduce a Residential Zones Development Code and a Lease Variation General Code; and, add provisions relating to student accommodation to the Parking and Vehicular Access General Code.²⁹

2010 Territory Plan Code Review Reference Group

- 2.17 The numerous concerns raised during the public consultation process on DV301 and DV303, as well as further changes proposed by the Authority, prompted the then Planning Minister to establish a reference group

²⁶ *Planning and Development Act 2007*, section 83.

²⁷ *Planning and Development Act 2007*, subsection 73(3).

²⁸ Planning and Development (Draft Variation No 301) Consultation Notice 2010: Estate Development Code, NI2010-300.

²⁹ Planning and Development (Draft Variation No 303) Consultation Notice 2010: Residential Zones Development Codes and Lease Variation General Code, NI2010-323.

comprising community and industry members, as well as representatives from professional associations, to assist the Authority in considering 'issues raised in public discussion about the draft variations to the Territory Plan Nos. 303 and 301'.³⁰

- 2.18 In contextualising the reference group's terms of reference, the then Minister stated:

As part of a rolling program of reviewing Territory Plan policy content following the introduction of the new Development Assessment Forum (DAF) Leading Practice format Territory Plan in 2008, the Government intends that these draft variations seek to ensure Canberra's future growth is socially, economically and environmentally sustainable.

The proposed changes include practical steps to help meet the ACT Government's target of cutting greenhouse gas emissions by 40 per cent by 2020, and 80 per cent by 2050, based on 1990 levels, delivering on the ACT Labor/ACT Greens Parliamentary Agreement and respond to the Minister for Planning's Statement of Planning Intent.

Codifying a number of these matters also offers an important opportunity to cut red tape and reduce costs to business.³¹

- 2.19 The main tasks assigned by the then Minister to the reference group were to:
- consider the issues raised in the submissions, including those of the organisations and individuals represented on the group, that have been received in response to the consultation on the two draft variations [301 and 303];
 - seek to provide a consensus position on issues to ensure the proposed changes are practical and workable and deliver the desired outcomes; and
 - develop recommendations for consideration by the ACT Planning and Land Authority and the Minister for Planning.³²

³⁰ 2010 Territory Plan Code Review Reference Group. *Draft variations to the Territory Plan Nos 301 and 303 - Findings and recommendations*, December 2010, Appendix 1.

³¹ 2010 Territory Plan Code Review Reference Group. *Draft variations to the Territory Plan Nos 301 and 303 - Findings and recommendations*, December 2010, Appendix 1.

³² 2010 Territory Plan Code Review Reference Group. *Draft variations to the Territory Plan Nos 301 and 303 - Findings and recommendations*, December 2010, Appendix 1.

- 2.20 The reference group, which was headed by then Chief Planning Executive, Mr Neil Savery, met four times in late 2010, before presenting its report to the then Planning Minister in January 2011. In all, it made 17 recommendations, including that DV301 and DV303 be withdrawn and replaced by an omnibus draft variation³³ – recommendations that were accepted, as reflected by the subsequently released DV306.

³³ 2010 Territory Plan Code Review Reference Group. *Draft variations to the Territory Plan Nos 301 and 303 - Findings and recommendations*, December 2010, paragraph 3.1.

3 THE DRAFT PLANNING VARIATION

- 3.1 This chapter outlines the proposed changes to the Territory Plan (the Plan) contained in Draft Variation 306 – Residential development, estate development and leasing codes (DV306), as well as discussing the outcome of the ACT Planning and Land Authority's (the Authority's) consultation process on the May 2011 public consultation version of DV306.³⁴

Consultation by the ACT Planning and Land Authority³⁵

- 3.2 On 3 June 2011, DV306 was released for public consultation, with comments due by 2 August 2011.³⁶ The due date was later extended to 6 September 2011.³⁷
- 3.3 While the basic content of DV301 and DV303 was retained in DV306, modifications were made in response to public submissions and the recommendations of the Territory Plan Code Review Reference Group.³⁸ In response to a significant number of public submissions made on the draft Multi Unit Housing Development Code³⁹, DV306 also introduced new provisions affecting redevelopment in the RZ2 – Suburban Core residential zone (RZ2).⁴⁰

³⁴ Copies of both the recommended and exhibited versions of the draft variation are accessible on the ACT Planning and Land Authority's website at http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan.

³⁵ From 17 May 2011, the ACT Planning and Land Authority's functions were transferred to the newly established Environment and Sustainable Development Directorate. References to the Environment and Sustainable Development Directorate and the ACT Planning and Land Authority are interchangeable in the context of this report.

³⁶ NI2011-273 Planning and Development (Draft Variation No 306) Consultation Notice 2011.

³⁷ NI2011-424 Planning and Development (Draft Variation No 306) Consultation Extension Notice 2011.

³⁸ See paragraph 2.17 above.

³⁹ Released as part of DV303.

⁴⁰ ACT Planning and Land Authority. *Report on Consultation. Draft Variation to the Territory Plan 306*, March 2012, p. 2.

Exhibited draft variation No 306

- 3.4 The public consultation version of DV306 proposed to:
- revise the objectives for all residential zones and revise and replace the residential zones development tables;
 - introduce a Residential Zones Development Code and a Lease Variation General Code;
 - replace the current Residential Subdivision Development Code with a new Estate Development Code; and
 - replace the current Residential Zones – Single Residential Housing Development Code and the Residential Zones – Multi Unit Housing Development Code, with a new Single Residential Development Code and a new Multi Unit Housing Development Code, respectively.⁴¹
- 3.5 The Authority received 76 written submissions commenting on the exhibited draft variation, including from the following organisations: Housing Industry Association; ACT Greens; Woden Valley Community Council; Griffith / Narrabundah Community Association; Dickson Residents Group; Tuggeranong Community Council; Inner South Community Council; Old Narrabundah Community Council; ACT Master Builders Association; Weston Creek Community Council; Australian Institute of Architects, ACT Chapter; Yarralumla Residents Association; and, Engineers Australia.⁴²
- 3.6 The two main issues raised during the public consultation process related to RZ2 redevelopment and solar access. Areas of concern included:
- the removal of the provision for a minimum of three hours of sunlight;
 - the impact of the new solar access provisions on the positioning of the building on a block and on building form;
 - that existing allowable encroachments into the building envelope could negate the desired solar access outcomes;

⁴¹ See NI2011-273 Planning and Development (Draft Variation No 306) Consultation Notice 2011.

⁴² ACT Planning and Land Authority, *Report on Consultation. Draft Variation to the Territory Plan 306*, March 2012, p. 3.

- the proposed solar access provisions would be more onerous in older suburbs which tended to have more poorly oriented blocks;
- the application of the solar access provisions to sloping blocks would further constrain building design;⁴³
- the new RZ2 provisions would have a negative effect on housing affordability, housing choice, urban infill and sustainability;
- potential medium density developments will become financially unviable;
- that the proposed RZ2 building and car park designs did not provide sufficient protection of neighbourhood amenity; and
- the restriction on the number of dwellings contained within a building in RZ2.⁴⁴

Changes

3.7 In response to issues raised in submissions, the Authority made a number of changes to the public consultation version of DV306, including:

- the reinstatement of the requirement that dwellings receive a minimum of three hours sunlight between 9.00am and 3.00pm on the winter solstice;
- inserting 'original' to describe the pattern of subdivision, in the relevant objective for each residential zone;
- the addition of 'and any statement of desired character in a relevant precinct code' to the definition of 'desired character';
- the removal of 'lease variations for the purpose of authorising a secondary residence' from development proposal listed in the code track;
- that land specified as such in a suburb precinct map is included in the code track of development; and
- the deletion from the impact track of otherwise prohibited development that is permitted under the National Capital Plan.⁴⁵

⁴³ ACT Environment and Sustainable Development Directorate, *Report on Consultation. Draft Variation to the Territory Plan 306* (DV306 Consultation Report), March 2012, pp. 16–20.

⁴⁴ DV306 Consultation Report, March 2012, pp. 9–15.

⁴⁵ Answers to Questions on Notice, dated 16 August 2012, Appendix 2B.

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4 SOLAR ACCESS

- 4.1 The primary focus of Draft Variation to the Territory Plan No 306 – Residential development, estate development and leasing codes (DV306) is the improvement of solar access in residential areas. Many of the proposed initiatives were presented to the public for comment during the consultation process for DV301 and DV303, following their release in June 2010.⁴⁶
- 4.2 The Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA, during his appearance at the Committee’s hearing on 25 July 2012, reiterated that ‘the key to this draft variation is improved solar access through subdivision design and through the design and siting of dwellings’, and added that the ‘underlying principle is a simple one: no house will overshadow its neighbour by more than 1.8 metres on the boundary.’⁴⁷
- 4.3 There are two aspects to solar access provisions under DV306; the reinstated provisions⁴⁸ relating to the requirement for a minimum of three hours of direct sunlight into a dwelling’s daytime living area between 9am and 3pm on the winter solstice; and changes to the building envelope provisions.
- 4.4 A number of concerns with the proposed solar access provisions in DV306 were raised with the Committee.
- 4.5 The Master Builders Association of the ACT (MBA) considered it important to be able to strike a balance between providing and promoting good solar access and ensuring that the resultant built form is not unduly compromised in other respects. However, the MBA argued that the new solar access provisions resulted in built outcomes which, while producing satisfactory solar outcomes for neighbours, were less desirable for the home owner.⁴⁹
- 4.6 The MBA undertook an analysis of the new solar access provisions based on a 500m² block, with a 200 to 250m² house, noting that an average (for 2012)

⁴⁶ ACT Planning and Land Authority, *Report on Consultation. Draft Variation to the Territory Plan 306*, March 2012, p. 3.

⁴⁷ *Transcript of Evidence*, 25 July 2012, p. 322.

three-bedroom house, without a garage, would be approximately 160m².⁵⁰ The MBA observed that given the cost of the land, a developer has an incentive to maximise Gross Floor Area (GFA)⁵¹, but also, in wanting to maximise private open space available, will seek to minimise the footprint of the house by going to two storeys.⁵²

- 4.7 The MBA outlined its concerns with a series of diagrams illustrating what it maintained is the effect of the new solar setback provisions on blocks with different solar orientations and slopes:

If we look at that then with the new requirements on it, that slide represents the new solar envelope—1.8 on the side boundary running up at 30 degrees in this case—you see that the garage on the boundary is no longer viable,... Particularly in Molonglo, designers are looking to put a garage to the side of the block. You want to minimise the setback off the fence, because it is otherwise a waste of open space. So they are saying, “Well, dig it in.” ... If you are serviced high in the front of the block or the rear of the block, there is only 1.2 down. You are not going to make it with stormwater into that. So you are into pump-out situations with a lot of complexity and a lot of cost.

... once you come around to, say, a north-south facing block, it fits well within the new envelope. If you run around the other orientations, say, the same house on an east-west block, and if you did it completely the wrong way and put the garage on the north, you would be fine, but we do not want to encourage that at all.

If you then look at a sloping block, this is a one-metre slope across the block, which is more common than a flat block. A one-metre slope we would consider a fairly flat block. Typically, what you would do is cut and fill. You would sink your house in, say, half a metre—half a metre

⁴⁸ These provisions were removed from the exhibited version of DV306. The reinstatement of these provisions was supported by several witnesses/submitters, see for example *Transcript of Evidence*, 11 July 2012, p. 115; *Transcript of Evidence*, 11 July 2012, p. 127.

⁴⁹ *Transcript of Evidence*, 6 July 2012, p. 84.

⁵⁰ *Transcript of Evidence*, 6 July 2012, p. 88.

⁵¹ For a definition of Gross Floor Area, see *Territory Plan 2008*, Part 13 *Definitions*.

⁵² *Transcript of Evidence*, 6 July 2012, pp. 88–89.

cut, half a metre fill—so the results are only just achievable now under the current conditions with a garage on the boundary. If you look at the impact of that with the new requirements, you are heading towards 1.8 metres out of the ground. So what that is illustrating to us as designers is that we have to be moving away from the southern boundary. That is on an east-west block, which is the preferred orientation for blocks, because it gives us the maximum solar access.⁵³

4.8 The Planning Institute of Australia (ACT Chapter) expressed a lack of confidence in the ability of the new provisions to achieve improved solar access.⁵⁴

4.9 The North Canberra Community Council submitted that the proposed solar access provisions would be beneficial, but only if they were adhered to.⁵⁵

4.10 The compromises in built form needed to meet the new solar provisions in new estates like Molonglo, were also highlighted by the MBA:

With the slightly sloping topography at Molonglo we have examples of the built environment already out there—partially built houses—where you can clearly see that they have had to lower the actual building into the site to actually comply with the interim effect provisions.

...You essentially create a position where there is poor drainage, poor building outcomes. You are looking out onto retaining walls. You have narrow blocks. It is just a very unsatisfactory outcome.⁵⁶

4.11 The Weston Creek Community Council also expressed concern about the solar access outcomes for small, narrow blocks, particularly in the Molonglo developments:

They will provide a very strong design challenge for developers. Given that developers have a little bit of a tendency not to be able to meet those

⁵³ *Transcript of Evidence*, 6 July 2012, p. 87.

⁵⁴ *Transcript of Evidence*, 13 July 2012, p. 165. See also *Transcript of Evidence*, 6 July 2012, p. 100.

⁵⁵ *Transcript of Evidence*, 11 July 2012, p. 147.

⁵⁶ *Transcript of Evidence*, 6 July 2012, p. 84. See also Submission 2, pp. 5–6.

challenges, it could result in inappropriate design and not provide sufficient sunlit open space and residential amenity for residents.⁵⁷

- 4.12 In response to criticisms that the new provisions will have unintended consequences, officials from the Environment and Sustainable Development Directorate (the Directorate) asserted:

What has been demonstrated by some interest groups is that there are certain developments that can be built now that will not be able to be built. Now, you can describe those as unintended consequences, but that is not the way we see it. The intention of these proposed policies is to provide greater solar protection to neighbouring properties. It is clear that some developments that can be permitted now would not be able to be permitted in the future. As I said, some people see those as unintended consequences, but we see it as a clear outcome of what this is all about.⁵⁸

- 4.13 In response to concerns about the imposition of a solar access envelope in addition to the existing building envelope, and the added complexity arising therefrom, officials from the Directorate advised:

There are existing building envelope provisions in the current codes that were introduced back in 2003 as a result of variation 200 to the territory plan. People made the same comments then, that they would not be able to build and meet those requirements. But, as we know, building development has continued since those policies were introduced.

The new policies replace those existing building envelopes with a new set of envelopes. So we are not adding another set on top of the existing ones; we are replacing them with a new set of building envelopes that are more focused on solar access and ensuring that the neighbouring property, in particular, is protected from the potential of overshadowing. The existing provisions do that to a certain extent but not to the same level that the proposed provisions would do.⁵⁹

⁵⁷ *Transcript of Evidence*, 11 July 2012, pp. 135–136. See also *Transcript of Evidence*, 11 July 2012, p. 146.

⁵⁸ *Transcript of Evidence*, 25 July 2012, pp. 327–328.

⁵⁹ *Transcript of Evidence*, 25 July 2012, p. 323.

- 4.14 The Senior Manager, Territory Plan Review and Implementation Section, in the Directorate added:

Some designs that they are currently able to put on blocks will not be able to be achieved. So there will need to be some adjustment.⁶⁰

- 4.15 The Minister for the Environment and Sustainable Development stated:

... there is a polarisation of view between those who advocate no change to the current provisions, or much more limited change. Generally speaking, the groups that adopt that approach are those who are building homes now.

I would submit that the housing sector is overwhelmingly a conservative industry which is reluctant to change practice that it is already used to or finds it difficult to adapt to change. That is no criticism of the intent of those in the industry; that is the nature of the industry. It is a conservative industry that is reluctant to change its practices and that is why regulatory responses are needed.

At the other end, there are community organisations and residents' organisations who feel that these changes still allow too much flexibility for industry. That is the polarized nature of this debate, and ... there are no easy answers between those two polarised extremes.⁶¹

- 4.16 The MBA also noted that one of the problems identified with the proposed new solar access provisions is the ease with which they could be negated by the erection of certain classes of buildings which do not require development or building approval.⁶²

- 4.17 Officials from the Directorate responded:

It is true that under the exemption provisions in the regulations it is possible to build a fence to the heights that you have quoted. I guess that is just confronting the reality of the need to provide flexibility. The reality, though, is that most people just do have either a 1.5 or 1.8-metre

⁶⁰ *Transcript of Evidence*, 25 July 2012, pp. 323–324.

⁶¹ *Transcript of Evidence*, 25 July 2012, pp. 326–327.

⁶² *Transcript of Evidence*, 6 July 2012, pp. 99–100.

high fence on their boundary. You can, I guess, point to a contradiction there.

I guess one of the ways that you might consider looking at the solar envelope—the solar envelope is based on the solar fence principle. We have nominated 1.8 metres because that is the standard fence height that the majority of people build. The implications of increasing the height of the solar fence—I think some people are suggesting that—is that the neighbour will be more severely overshadowed. For every 300 millimetres that the fence is increased, the length of the shadow would increase by around about 600 millimetres.

It is a trade-off. We could say that based on the maximum height possible under the fencing provisions we could base the solar fence on, say, a 2.1 or 2.4-metre fence, but the consequence of that would be in most cases to have a much more significant overshadowing impact on the neighbour.

It is a trade-off. It is on the basis that I think government was saying to us that solar access is very important. We have to accept that, in reality, most people are going to build a fence on their boundary and that fence is going to overshadow the neighbour. So it is pointless to impose a restriction that is tighter than that. But, again, it is a trade-off. If the Assembly felt that it was too tight, then there is potential to adjust it, but the consequence is greater overshadowing of the neighbour.⁶³

- 4.18 In response to the apparent illogicality of the contradictory situations, the Minister for the Environment and Sustainable Development advised:

Planning regulations have to operate in the context of what are reasonable and what are unreasonable impositions on what people do in their backyards. I do not think any of us would advocate a return to the requirement where you needed development approval to build a garden shed or even a small garage which, of course, used to be the case and which was overly onerous and unreasonable. Our planners, the government's planners, have to work in that context, but at the conclusion of this debate the fundamental question will be: do we want

⁶³ *Transcript of Evidence*, 25 July 2012, p. 324.

provisions which provide and guarantee better solar access for dwellings?

There is no perfect formula for achieving this. There is no formula that is going to satisfy every single stakeholder, nor is there a formula which is not without some compromise.⁶⁴

- 4.19 The Committee notes that boundary fences, sheds and garages do not have to meet the solar access requirements and thus can lead to shading which would not be allowed by a structure that does not require a development application.

RECOMMENDATION 3

- 4.20 **The Committee recommends that the Environment and Sustainable Development Directorate monitors the impact on solar access of structures that don't require approval, and amend requirements if necessary.**

- 4.21 Reliance on the energy rating system and the imposition of a minimum star rating for houses alone was generally not supported by witnesses or the Minister who observed:

Industry is on the record as opposing increases in star ratings for dwellings. The HIA and the MBA are both on the record opposing previous reforms to lift the star rating of dwellings.⁶⁵

- 4.22 Officials from the Directorate added:

... if a person goes to the trouble of designing a house to meet a six-star energy rating and then the current provisions allow their neighbour to build a house which then overshadows them and takes away the access to sunshine that they have designed their house to achieve, that is a pretty unfortunate situation. These provisions are designed to stop that and to ensure that if you do the right thing, your access to sunshine will be protected.⁶⁶

⁶⁴ *Transcript of Evidence*, 25 July 2012, p. 325.

⁶⁵ *Transcript of Evidence*, 25 July 2012, p. 328. But see Submission 2, p. 6.

⁶⁶ *Transcript of Evidence*, 25 July 2012, p. 328.

- 4.23 The Woden Valley Community Council (WVCC) considered that the solar access provisions should go further:

... we were very concerned that the existing requirement for a minimum of three hours of solar access to residential living areas and private open space had been removed from the original draft variation. While we welcome the reinstatement of this requirement, the three hours is really just a bare minimum. There is a lot more to solar access than meeting an energy target. It is about quality of life as well. An extremely well-insulated house that is built like a refrigerator may well achieve a six-star rating, but, if there is little or no solar access, who on earth would want to live in it?

WVCC believes that the current provisions on solar access should in fact be strengthened to mandate that all housing, both single and multi-unit developments, should be designed for optimal orientation of living spaces for solar gain, and that occurs within the range of 15 degrees west to 20 degrees east of true or solar north.⁶⁷

- 4.24 The Chair of the WVCC added:

We believe that good solar access should be the priority and that developers should have to use their imagination and their expertise to come up with solutions that meet that priority. It really is that important, especially in a city like Canberra, which is a cold place, and a high place also. So we are of the view that strong rules are really important because they can encourage the kind of innovation and creative thinking that we so desperately need for the future of our city.⁶⁸

- 4.25 By contrast, the Property Council of Australia did not single out solar access as of primary importance, particularly for small blocks of 250m² or less, arguing that the solar access provisions for apartments should also apply in these cases:

If you do a townhouse development on a block of land, you will achieve a yield of one dwelling per 260 to 300 square metres, and it is a multi-unit

⁶⁷ *Transcript of Evidence*, 11 July 2012, p. 158.

⁶⁸ *Transcript of Evidence*, 11 July 2012, p. 159.

site. The only difference is that this has an individual lease, rather than being part of a body corporate, and it would seem sensible that the same rule should apply to both.⁶⁹

4.26 Concerns were also raised that the new solar access provisions would force houses to have more living space on the south side of the house.⁷⁰

4.27 Officials from the Directorate responded:

Shadows are fixed, so what some are advocating is that, “Yes, I can reduce the amount of so-called lost space on the southern side of my house that is in shadow by moving my house further towards the southern boundary.” But all that does is move the shadow on to the neighbour’s block. So it is just a question of how much shadow can be tolerated on the neighbour’s block, hence, the solar fence.⁷¹

4.28 In response to the claim by a Member of the Committee that ‘there might be equality, but everybody is worse off’,⁷² officials from the Directorate added:

... there will be a number of designs that could counter that argument. It is possible to have buildings on the northern side but still have adequate sunlit private open space and adequate access to living room windows all on the northern side, even if part of the house has to be right on the northern boundary, in the worst case. It is a question of design, in my view, as to how the possibilities that a solar fence allows can be properly put into place on an individual block to maximise the amount of enjoyment of solar access.⁷³

4.29 While the current requirements were considered to have provided acceptable solar outcomes for residents and their neighbours,⁷⁴ the Minister expressed a different view:

⁶⁹ *Transcript of Evidence*, 13 July 2012, p. 204.

⁷⁰ *Transcript of Evidence*, 25 July 2012, pp. 335–336.

⁷¹ *Transcript of Evidence*, 25 July 2012, p. 336.

⁷² *Transcript of Evidence*, 25 July 2012, p. 336.

⁷³ *Transcript of Evidence*, 25 July 2012, p. 336.

⁷⁴ *Transcript of Evidence*, 6 July 2012, p. 101.

There are too many dwellings being built in this city still that do not meet what should be a reasonable standard of providing good solar access for people to live in them. I do not want people who live in new homes having invested considerable amounts of money and taken on considerable levels of debt to live in homes that still require an overwhelming reliance on mechanical heating and cooling. There needs to be a shift away from that. This is what this draft variation is all about. People are concerned about the costs of their electricity bills and their gas bills. This is a direct response to that question. It is about saying to industry, "You must build homes which have less reliance on mechanical heating and cooling." Householders cannot afford it, and for the amount of money they are paying, they deserve a better quality product.⁷⁵

- 4.30 The Minister concluded that to not support DV306 would be to accept a lower standard of solar access protection:

The alternative is to have no provisions in the territory plan to provide for effective protection of matters such as solar access. That is the alternative to at least proceeding to the adoption of some form of provision for protection of those types of issues in the territory plan.⁷⁶

- 4.31 The Committee also visited the new suburb of Wright in the Molonglo Valley, with Mr Ross Barrett OAM, President, Master Builders Association of the ACT (MBA); Mr John Miller, MBA Executive Director; and, architects Mr Glen Dowse, Mr Tim Johnston and Mr Alastair MacCallum.
- 4.32 The MBA representatives pointed out some developments that they believed were undesirable. Some of these included two storey developments where the second storey was significantly smaller than the first storey – described by the MBA as a 'pimple on a pumpkin'. The MBA also pointed out buildings that were below original ground level and the waterproofing and drainage issues this presented.
- 4.33 The MBA contended that these built form outcomes were due to the need to reduce the height of the building and, in particular, the second storey to

⁷⁵ *Transcript of Evidence*, 25 July 2012, p. 328.

⁷⁶ *Transcript of Evidence*, 4 July 2012, p. 39.

preserve solar access. The Committee questioned the extent to which the results were due to solar access provisions or larger houses on smaller blocks.

- 4.34 The Committee recognised that, especially as building lot sizes decreased, solar access rules can constrain development opportunities. The Committee also recognised that there can be trade-offs between solar access, block yield and size/design of houses. Nonetheless the Committee felt that it was a reasonable expectation that all land owners should expect solar access on their land, and supports the principle of solar access contained in DV306.
- 4.35 The Committee recognises that, in practice, there have been some unintended consequences of the solar access provisions. The Committee observed a number of developments in Wright where there were two narrow strips left at either side of the block. The MBA informed the Committee that under previous rules the same amount of undeveloped space would be left but it would be in one more usable piece.

RECOMMENDATION 4

- 4.36 **The Committee recommends that the Environment and Sustainable Development Directorate considers changes which would make development to one edge of the block more feasible so as to eliminate wasted strips of land at both edges of blocks.**

5 REDEVELOPMENT IN RZ2

- 5.1 One of the main areas of continuing concern highlighted during both the ACT Planning and Land Authority's public consultation process and the Committee's inquiry into DV306, related to the controls affecting redevelopment in the residential suburban core zone (RZ2).
- 5.2 The suburban core zone was established following changes introduced by 2003 Variation to the Territory Plan No 200, commonly known as the 'Garden City' variation, to provide for greater densification around commercial centres.
- 5.3 Given the limited amount of redevelopment that is permissible in the suburban zone (RZ1), RZ2 is considered to be the zone which permits modest change in a neighbourhood, a transition zone between the low and higher density areas.⁷⁷
- 5.4 The imposition of new controls on multi-unit development in the RZ2 zone, included in DV306, were a response to community concerns about the level of redevelopment activity in the zone that were raised during the public consultation process on DV303, a precursor to DV306.⁷⁸
- 5.5 In addition, the contribution of the RZ2 zone, along with RZ1, to the overall housing stock in Canberra was considered comparatively small, with no more than 200 to 500 dwellings annually. The Government has therefore sought to minimise public concern over redevelopment in the zone. The introduction of the new RZ2 provisions also recognises the value placed on the existing character of these areas by the community, but which allows for the provision of different housing types, thereby also giving residents the capacity to age in place.⁷⁹
- 5.6 Unlike the majority of the changes proposed under this draft variation, those pertaining to RZ2 were given interim effect.

⁷⁷ *Transcript of Evidence*, 18 July 2012, pp. 233–234.

⁷⁸ *Transcript of Evidence*, 25 July 2012, p. 322.

⁷⁹ *Transcript of Evidence*, 4 July 2012, pp. 54–55, 57.

- 5.7 Interim effect can apply to the provisions of a draft variation to the Territory Plan during two defined periods: (1) from the public notification for consultation on the draft variation prior to it being submitted to the responsible Minister;⁸⁰ and (2) the period from public notification of the availability of the draft variation as submitted to the Minister and its passage through the ACT Legislative Assembly and commencement.⁸¹
- 5.8 The decision to apply interim effect to a draft variation, or specified provisions thereof, is made on a case by case basis and where it is determined that there is a public benefit for doing so, for example, where a surge of development applications submitted prior to the commencement of a variation could undermine the intent or effectiveness of the proposed variation, or where a speculative environment may be created which compels or pressures proponents to bring forward proposed developments ahead of any proposed changes (which could be prompted by misinformation or misunderstanding about the changes and their implications).⁸²
- 5.9 The majority of the provisions of DV306 which have interim effect relate to redevelopment RZ2, specifically:
- Residential density – single dwelling blocks – RZ2;⁸³
 - Residential density – adaptable housing – single dwelling blocks - RZ2;⁸⁴
 - Number of dwellings in each building – single dwelling blocks – RZ2;⁸⁵
 - Building separation – single dwelling blocks – RZ2;⁸⁶
 - Building design – RZ2;⁸⁷
 - Number of co-located parking spaces – RZ2;⁸⁸ and
 - Consolidation of single dwelling blocks – RZ2.⁸⁹

⁸⁰ *Planning and Development Act 2007*, section 65.

⁸¹ *Planning and Development Act 2007*, section 72.

⁸² ACT Environment and Sustainable Development Directorate, *Interim effect fact sheet*, November 2011.

⁸³ DV306, Appendix D – Draft Multi Unit Housing Development Code (Draft MUHDC), Element 3 – Item 3.8.

⁸⁴ Draft MUHDC, Element 3 – Item 3.10.

⁸⁵ Draft MUHDC, Element 3 – Item 3.11.

⁸⁶ Draft MUHDC, Element 3 – Item 3.27.

⁸⁷ Draft MUHDC, Element 5 – Item 5.4.

⁸⁸ Draft MUHDC, Element 7 – Item 7.6.

- 5.10 The impact of the interim effect provisions on the viability of redevelopment in the RZ2 residential zone was a major concern to the Housing Industry Association (HIA),⁹⁰ as was the resulting lack of certainty for the industry and the impact on the cost of developments, which prompted the HIA to suggest a transition period for proposed changes.⁹¹
- 5.11 While several witnesses argued for the withdrawal of the interim effect provisions,⁹² they had strong support from some community groups and individuals.⁹³
- 5.12 An additional concern raised by the Master Builders Association of the ACT (MBA) was the impact of the interim effect provisions on developers who had purchased land under the existing Territory Plan provisions.⁹⁴
- 5.13 In its response to criticisms of the interim effect provisions, the Environment and Sustainable Development Directorate (the Directorate) advised that ‘interim effect provisions are not invoked lightly’ but were used ‘only to give immediate effect to important planning initiatives.’ The Directorate’s report also noted that advance notification of intended interim effect would be likely to bring forward development applications under the current rules, thereby undermining the application of the new policy.⁹⁵
- 5.14 While the Committee acknowledges that the lack of notice about the imposition of interim effect provisions can cause confusion, particularly to small to medium sized businesses, it is also cognisant of the need to ensure that the objectives of any proposed planning changes are not undermined by

⁸⁹ DV306, Appendix B – *Residential Zones Development Code*, Element 10 – Item 10.3. The final area covered by interim effect is block size, slope and orientation in new estates (DV306, Draft *Estate Development Code* (EDC), Element 8, Item 8.1: Rule 46, Criterion 46 and Rule 47 (and block compliance tables referred to in R46 and listed in EDC Appendix A).

⁹⁰ *Transcript of Evidence*, 18 July 2012, p. 239.

⁹¹ *Transcript of Evidence*, 18 July 2012, pp. 254–255; *Transcript of Evidence*, 18 July 2012, p. 265.

⁹² See for example Submission No. 12, p. 3.

⁹³ *Transcript of Evidence*, 11 July 2012, p. 115; *Transcript of Evidence*, 11 July 2012, pp. 127, 128. See also Submission No. 15, p. 4; Submission No. 18, p. 2.

⁹⁴ *Transcript of Evidence*, 6 July 2012, pp. 83–84.

⁹⁵ ACT Environment and Sustainable Development Directorate, *Report on Consultation Draft Variation to the Territory Plan 306*, March 2012, pp. 43–44.

either a transition period or a failure to invoke interim effect as deemed necessary.

- 5.15 Views on redevelopment in RZ2 were polarised between those who felt that these areas could be providing greater opportunities for urban infill and those who were concerned about the impact of increased density on the existing character of the suburb.
- 5.16 Some considered that the previous controls had delivered good outcomes and that, while there were issues with the level of densification in RZ2, much of the concern had been with built form and quality of design.⁹⁶ Community councils were critical about the quality of design, but still favoured the new controls on multi-unit redevelopment in the suburban core zone.⁹⁷
- 5.17 While there were some suggestions for improving design quality, the ‘desired character’ of the neighbourhood or suburb was the predominant issue. This is discussed in more detail in Chapter 9.
- 5.18 In addition to the quality of design of new developments, the dramatic increase in density that can occur with a single redevelopment was also a matter of disquiet for the community.⁹⁸
- 5.19 A major concern with the proposed new restrictions on multi unit development in this zone for the Planning Institute of Australia (PIA) was the consequential reduction in density or development yield, leading to difficulties in meeting urban infill targets set under the 2004 Canberra Spatial Plan and the 2011 draft ACT Planning Strategy. Coupled with other factors, such as the Lease Variation Charge, the PIA submitted that these new controls could potentially impact on housing affordability or, due to economic non-viability, result in little or no redevelopment in this zone.⁹⁹

⁹⁶ *Transcript of Evidence*, 6 July 2012, p. 99. See also *Transcript of Evidence*, 11 July 2012, p. 142.

⁹⁷ See for example, *Transcript of Evidence*, 11 July 2012, p. 142; *Transcript of Evidence*, 11 July 2012, p. 127; *Transcript of Evidence*, 11 July 2012, p. 115.

⁹⁸ *Transcript of Evidence*, 11 July 2012, pp. 146–147.

⁹⁹ Submission No. 8, p. 8.

- 5.20 The apparent contradiction between the objectives for, and the controls imposed on development in, the suburban core zone, was discussed with the Committee.¹⁰⁰
- 5.21 Purdon Associates and Cox Architecture (Purdon and Cox) submitted that planning controls should be designed to facilitate the Government's policy of increasing residential development in certain areas, but that, instead, the proposed controls would encourage large, single dwellings or an inefficient use of land.¹⁰¹
- 5.22 An alternative approach suggested by Purdon and Cox for promoting greater densification while retaining the desired character of the area, would be to allow apartments in the suburban core zone, increase the rear and side setbacks and increase the plot ratio from 50 to 60 or 65 per cent.¹⁰²
- 5.23 While other residential zones provide for higher densification, the Committee heard from the MBA and the HIA that, despite there being a large market for low to medium sized developments close to local centres, the new controls had made redevelopment in these areas, and RZ2 more generally, economically unviable.¹⁰³
- 5.24 Confusion about the type of redevelopment that can occur in RZ2, and the resulting delays and costs arising from the associated appeal processes, were considered to be due to a lack of public awareness about the objectives and nature of the zone.¹⁰⁴
- 5.25 The trade off between density and lower travel costs is another factor in the relative attractiveness of redevelopment between RZ2 zones in the inner suburbs compared with those in Tuggeranong or Belconnen.¹⁰⁵ This issue was also identified as part of a continuing concern about the lack of a clear

¹⁰⁰ See for example *Transcript of Evidence*, 6 July 2012, p. 83; *Transcript of Evidence*, 13 July 2012, p. 185; *Transcript of Evidence*, 13 July 2012, p. 199; *Transcript of Evidence*, 18 July 2012, p. 228.

¹⁰¹ *Transcript of Evidence*, 20 July 2012, p. 295. See also *Transcript of Evidence*, 18 July 2012, pp. 260, 262.

¹⁰² *Transcript of Evidence*, 20 July 2012, p. 303.

¹⁰³ See for example *Transcript of Evidence*, 6 July 2012, p. 83; *Transcript of Evidence*, 18 July 2012, p. 239.

¹⁰⁴ *Transcript of Evidence*, 18 July 2012, pp. 233–234.

¹⁰⁵ *Transcript of Evidence*, 11 July 2012, p. 147.

differentiation between the five residential zones, particularly with respect to RZ1 and RZ2, but also, in the case of RZ2, within the zone.¹⁰⁶

- 5.26 The impact of the changes on the level of redevelopment in RZ2 was acknowledged by the Directorate, but it considered that, as a result of the new controls, future proposals were likely to be more consistent with the existing neighbourhood character and more likely to be supported by the community, while at the same time providing additional housing options.¹⁰⁷
- 5.27 While the Committee agrees with the Directorate that the RZ2 changes with interim effect would mean the future development may well be more consistent with current development, it did not believe that was the major consideration. The Government has expressed a policy position for 50/50 infill and greenfield development, and RZ2 redevelopment should be part of the infill.
- 5.28 Industry members who gave evidence all agreed that the RZ2 changes would tend to increase the price of developments in RZ2 zones. This is contrary to the universally expressed goal of affordable housing and makes it less likely that new housing in RZ2 areas will be able to be used by residents of the surrounding suburb for 'aging in place'. The Weston Creek Community Council also considered that RZ1 and RZ2 could support higher densities – at least in some places in Weston Creek.¹⁰⁸
- 5.29 The Committee shares the concerns that the changes to RZ2 zoning may result in redevelopment in RZ2 areas becoming economically non-viable. As many houses in older RZ2 areas are reaching an age where they are likely to be either demolished or substantially renovated, if redevelopment to a higher density is not viable at this point of time, it may be 50 years before the opportunity for urban renewal arises again.
- 5.30 The Committee is concerned that the RZ2 changes appear to encourage fewer smaller units and more three-bedroom units, and consequently fewer households. With the number of people in ACT households declining, the

¹⁰⁶ Submission No. 8, p. 8.

¹⁰⁷ *Transcript of Evidence*, 4 July 2012, p. 56.

¹⁰⁸ *Transcript of Evidence*, 11 July 2012, pp. 139–141.

Committee considers it unsustainable to regulate in a way that appears to promote fewer but larger dwellings.¹⁰⁹ The Committee heard evidence that there was limited demand for three-bedroom apartments and they would most likely become share houses.¹¹⁰

- 5.31 The Committee also notes that separating out car parks for multi-unit developments may well lead to more area being used for car parking with additional driveways.¹¹¹
- 5.32 The Committee understands that the provisions of DV306 would mean that some successful Canberra developments such as the terraces on Moorhouse Street in O'Connor (part of City Edge) and on Novar Street in Yarralumla could no longer be built. Indeed, the Australian Institute of Architects stated that two examples given in the Directorate's description of RZ2 would not be able to be built under the provisions of DV306.¹¹² The Committee considers that allowing apartments and medium density development near local shops is desirable and probably vital to the long term viability of local shops.
- 5.33 RZ2 areas are close to local shops and transport corridors and the purpose of the RZ2 zoning is to allow increased density in these areas. Previously the Government advised that RZ2 areas were successful.¹¹³ It is unclear to the Committee why the Government is now going in the opposite direction to its previous position.
- 5.34 The Committee appreciates that change in planning is needed in RZ2 areas. One option is to establish design review panels which have been previously suggested to the planning and land authority. As noted above, community councils say they are not against infill as such, rather it is the quality of the development that is important. The Committee considers that this statement is

¹⁰⁹ The Chair of the Committee does not agree with this statement and considers that to attempt to regulate for smaller dwellings would be too prescriptive.

¹¹⁰ *Transcript of Evidence*, 6 July 2012, p. 96.

¹¹¹ *Transcript of Evidence*, 17 April 2012, pp. 8–9.

¹¹² *Transcript of Evidence*, 18 July 2012, p. 269.

¹¹³ ACT Planning and Land Authority, *Evaluation of the Garden City Provisions of the Territory Plan*, Discussion Paper, March 2007, pp. 12, 17.

true and would like to see it tested by supporting higher quality development. The Committee also sees a future role for neighbourhood plans – to be embodied in the Territory Plan as precinct codes – to get community agreement to residential zone changes.

RECOMMENDATION 5

- 5.35 **The Committee recommends that the Environment and Sustainable Development Directorate reconsiders RZ2 changes to make them more consistent with the goals of affordable housing and urban infill.**

6 ACCESSIBILITY OF DOCUMENTATION

- 6.1 Draft Variation to the Territory Plan No. 306 – Residential development, estate development and leasing codes (DV306) and associated papers comprise over 400 pages, including: the draft variation itself; seven appendices; 76 public submissions; four submissions from mandatory agencies; the report on the public consultation process; ten fact sheets on the exhibited version of the draft variation; and, the Territory Plan Code Review Reference Group’s December 2010 report.
- 6.2 A number of witnesses raised concerns about the accessibility and complexity of the draft variation, with several arguing for the inclusion of a separate chapter for each zone.¹¹⁴ This concern extended to the structure of the Territory Plan as a whole.¹¹⁵
- 6.3 Another suggestion was to include comprehensive flow charts which demonstrate how to access different parts of the Territory Plan and its interconnected codes and tables.¹¹⁶
- 6.4 While the planning and land authority’s website includes a quick guide to development applications, a more comprehensive guide to both development applications and the Territory Plan were considered necessary by the Master Builders Association of the ACT (MBA).¹¹⁷ A guide to development from a resident’s point of view was also seen by the Woden Valley Community Council as desirable to assist in community understanding of planning processes.¹¹⁸

¹¹⁴ See for example Submission No. 4, p. 3, Submission No. 13, p. 2, Submission 14a, p. 2, *Transcript of Evidence*, 11 July 2012, p. 116; *Transcript of Evidence*, pp. 118–119; *Transcript of Evidence*, 11 July 2012, pp. 131–132; *Transcript of Evidence*, 11 July 2012, p. 137.

¹¹⁵ *Transcript of Evidence*, 6 July 2012, pp. 98–99.

¹¹⁶ *Transcript of Evidence*, 11 July 2012, p. 138.

¹¹⁷ Submission No. 10, p. 2. See also *Transcript of Evidence*, 18 July 2012, p. 237.

¹¹⁸ *Transcript of Evidence*, 11 July 2012, p. 161.

- 6.5 The inaccessibility of DV306, and the Territory Plan more generally, compared with similar planning documents in other jurisdictions, was also demonstrated by the Inner South Canberra Community Council (ISCCC).¹¹⁹
- 6.6 While draft variations, and indeed the whole Territory Plan, is available for downloading from the planning and land authority's website, the sheer volume of these documents makes it difficult, and in some cases, impossible for members of the community to print off.¹²⁰
- 6.7 Noting that planning is an important issue for everyone in the community, the ISCCC suggested that there is a need for more documents that the 'average person' can understand.¹²¹
- 6.8 The removal of superfluous detail from the planning codes was also suggested as a way of addressing their complexity and volume, with a view to making the documents simpler, more transparent and user friendly.¹²²
- 6.9 The decision on how to present information, either within a single document or dispersed across several documents, is not a problem unique to the Territory Plan,¹²³ and illustrates the difficulty in making material available in a way that suits different preferences.
- 6.10 While community councils said they had been amply briefed by the Environment and Sustainable Development Directorate (the Directorate), the Weston Creek Community Council stated that transitioning from the briefing material to the draft variation itself was another difficulty encountered.¹²⁴
- 6.11 In response to concerns raised about the inaccessibility of the DV306, the Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA, noted that the document is a statutory instrument, which must stand up

¹¹⁹ *Transcript of Evidence*, 11 July 2012, pp. 107–108.

¹²⁰ *Transcript of Evidence*, 11 July 2012, pp. 107, 108–109.

¹²¹ *Transcript of Evidence*, 11 July 2012, pp. 108–109.

¹²² *Transcript of Evidence*, 13 July 2012, p. 190.

¹²³ See for example *Transcript of Evidence*, 11 July 2012, p. 146 regarding guidance for building bicycle facilities.

¹²⁴ *Transcript of Evidence*, 11 July 2012, p. 138.

to judicial review, and that it is necessarily complex because of the issues that are covered.¹²⁵

- 6.12 The Committee recognises the difficulty in sifting through a very large document to extract the information relevant to a particular zone and considers that additional, separate fact sheets or supporting document that sit outside the statutory instrument would have assisted the community and other stakeholders to more clearly and easily identify what changes will affect them, even if similar provisions will apply in other zones.
- 6.13 While there is much in DV306 that retains the existing provisions, this is not clear by a cursory inspection of the documents. Having a table which identifies the changes will make it easier for stakeholders to hone in on changes that will affect them.

RECOMMENDATION 6

- 6.14 **The Committee recommends that the Environment and Sustainable Development provides for all future variations (a) a Consultation Report which identifies each of the concerns raised and responds to each individually so that it is clear to submitters and the Committee what changes have been made in response to particular concerns and if changes have not be made, the reasons why, and (b) a comparative table which details the relevant current provisions of the Territory Plan, the proposed changes and the basis for making the change.**
- 6.15 As part of the revised format for the consultation report, the Committee also considers that it would be helpful to have a list of the submitters to the public consultation process.

RECOMMENDATION 7

- 6.16 **The Committee recommends that the Environment and Sustainable Development Directorate includes with its future draft variation consultation reports, an index listing the submission number and organisation/individual who made the submission.**

¹²⁵ *Transcript of Evidence*, 4 July 2012, pp. 46–47.

- 6.17 For draft variations that cover a range of issues, or, as in the case of DV306, different residential zones, the Committee considers that a series of Supplementary Guides which identify relevant provisions from the draft variation in a single document, for example all provisions relevant to RZ1 that are included in the various codes, should be cross referenced in a single document so that someone living in RZ1 can proceed to the Supplementary Guide in the first instance and be directed to the relevant provisions of the draft variation. In this way, the integrity of the variation and the Territory Plan as a statutory instrument is not compromised, but the information contained within it and in draft variations is more accessible, particularly during the consultation process.
- 6.18 The Committee considers this could be accomplished by publishing the same data with different electronic links.

RECOMMENDATION 8

- 6.19 **The Committee recommends that the Territory Plan be published electronically in a number of formats, with hyperlinks for ease of understanding.**

7 CONSULTATION PROCESS

7.1 Where a variation, other than a technical variation, to the Territory Plan is to be made, section 57 of the *Planning and Development Act 2007* (the Act) requires the planning and land authority (the Authority) to prepare a consultation notice that invites comments on the draft plan variation. The consultation notice:

- states that copies of the draft plan variation and the background papers are available for public inspection and purchase during a stated period of not less than 15 working days (the consultation period) at stated places;
- invites people to give written comments (consultation comments) about the draft plan variation to the authority at a stated address during the consultation period;
- states that copies of written comments about the draft plan variation will be made available for public inspection for a period of at least 15 working days, starting 10 working days after the day the consultation period ends, at stated places; and
- states whether interim effect applies to the draft plan variation or part of the draft plan variation.¹²⁶

7.2 As noted earlier in this report, DV306 was released for public consultation on 3 June 2011, with comments initially due by 2 August 2011, a period of eight weeks. The due date was later extended to 6 September 2011, adding a further five weeks.

7.3 The first DV306 consultation notice stated that copies of the draft variation documents were available online at www.actpla.act.gov.au (noting that free internet access is available at ACT public libraries) and at the Authority's Customer Service Centre (CSC), 16 Challis Street, Dickson during business hours.¹²⁷

¹²⁶ *Planning and Development Act 2007*, sections 63–65.

¹²⁷ NI2011-273 Planning and Development (Draft Variation No 306) Consultation Notice 2011.

- 7.4 The second DV306 consultation notice advised that the draft variation, associated fact sheets and details of provisions that had interim effect could be accessed from www.actpla.act.gov.au, and that copies were available for inspection and purchase at the Authority's CSC, 16 Challis Street, Dickson, from Monday to Friday, between the hours of 8:30am and 4:30pm during the consultation period.¹²⁸
- 7.5 Both consultation notices stated that comments on the draft variation could be emailed to terrplan@act.gov.au, mailed to ACTPLA, GPO Box 1908, Canberra, ACT 2601 or delivered to ACTPLA's CSC, and that comments received would be made available for public inspection for a period of no less than 15 business days at ACTPLA's CSC the day after the closing date for submissions, and on ACTPLA's website 10 business days after the closing date for submissions.¹²⁹
- 7.6 A number of submissions contended that the consultation process for DV306 was flawed or inadequate and that public engagement on draft variations needs to be improved. Almost without exception, submitters commented on complexity of the draft variation and difficulty for people, professional or community to understand it.
- 7.7 Given that the papers associated with DV306 total some 417 pages, it was argued by some witnesses that community involvement and understanding would have been enhanced if the proposed changes had been introduced in smaller portions and better publicised.¹³⁰
- 7.8 The MBA suggested that an ongoing discussion about the Territory Plan and broader planning changes would improve the consultation process, with topics being presented to stakeholders for response rather than appearing to have been initiated 'out of nowhere'.¹³¹

¹²⁸ NI2011-424 Planning and Development (Draft Variation No 306) Consultation Extension Notice 2011.

¹²⁹ See NI2011-273 and NI2011-424.

¹³⁰ See for example Submission No. 4, p. 3; Submission No. 13, p. 2. See also *Transcript of Evidence*, 6 July 2012, pp. 101–102.

¹³¹ *Transcript of Evidence*, 4 July 2012, p. 99.

- 7.9 The Australian Institute of Architects criticised the consultation process for its focus on seeking responses to complex technical control documents which ‘lacked any clarity of intent.’¹³²
- 7.10 Ms Margaret Fanning considered that it was essential for the Government to ensure that the content of draft variations is better publicised and explained, and that the community is more actively engaged, with an emphasis on dialogue rather than what is perceived as ‘just going through the motions of consultation.’¹³³
- 7.11 While community councils provide one channel for disseminating information to residents, the weakness in relying solely on community councils for engaging with the community was also identified.¹³⁴
- 7.12 The difficulties in engaging with communities on draft variations is something that is encountered by community councils themselves, and may also be symptomatic of the ‘adversarial’ nature of the public consultation process. Providing a focus for meaningful conversations to occur, such as the development of suburb precinct codes, was considered by the Woden Valley Community Council as one way of improving community engagement.¹³⁵
- 7.13 The issue of the time allowed for public feedback was another area of concern, particularly for community groups, which suggested a minimum of three months for providing comments on draft variations.¹³⁶
- 7.14 Frustration with the current ‘submission and rebuttal’ approach to planning was also apparent. The Planning Institute of Australia submitted that the draft variation process could be enhanced through a mediated approach.¹³⁷
- 7.15 An additional frustration for the Weston Creek Community Council, particularly in relation to a large variation such as DV306, was identifying

¹³² Submission No. 12, p. 2.

¹³³ Submission No. 15, p. 4.

¹³⁴ *Transcript of Evidence*, 11 July 2012, pp. 154–155.

¹³⁵ *Transcript of Evidence*, 11 July 2012, p. 160.

¹³⁶ *Transcript of Evidence*, 11 July 2012, pp. 111–112.

¹³⁷ Submission No. 8, p. 16. See also *Transcript of Evidence*, 13 July 2012, p. 166.

where and how specific public comments had or had not been incorporated into the recommended variation.¹³⁸

- 7.16 Many professional organisations, including the Housing Industry Association (HIA), the Master Builders Association of the ACT (MBA), the Australian Institute of Architects (AIA) and the Planning Institute of Australia (ACT Division (PIA)), called for either withdrawal or major rewriting of the variation and codes to reflect community values and policy directions, including through the engagement of an independent expert advisor.¹³⁹
- 7.17 While the Committee welcomes suggestions on improving the draft variation process both at the authority and the standing committee stage, the Committee considers that it would be more useful in the first instance for a more detailed consultation report to be prepared, which provides the rationale for the authority's responses to written submissions made during the public consultation process. This would ensure that submitters as well as the Standing Committee have a better understanding of what changes have been made in response to the public consultation process and which changes were not supported, and why.
- 7.18 The Committee agrees that lead times for consultation can be too short particularly for complex variations such as DV306. It considers that a short consultation period can ultimately be counter-productive where stakeholders are unable to digest the large and complex provisions being proposed and which may result in extensions for individual responders being granted or the consultation period itself being extended.
- 7.19 The Committee also recognises that not all draft variations will attract the same level of community interest as those that affect residential areas and does not wish to recommend a 'one-size-fits-all' consultation period for all draft variations.
- 7.20 The Committee considers that the information that is provided in the lead up to the release of the draft variation will have a greater impact on the

¹³⁸ Submission No. 11, p. 1.

¹³⁹ Submission No. 12, pp. 3–4; Submission No. 3, p. 2; Submission No. 4, pp. 2–3; Submission No. 13, p. 3; Submission No. 15, p. 3.

accessibility of the documentation and the ability of stakeholders to respond within the specified consultation period.

- 7.21 The Committee suggests an improvement in the type of community engagement rather than necessarily an extension to the time allowed for public comment. Obviously, community and indeed general stakeholder engagement cannot necessarily be considered adequate or effective merely because the requisite number of briefings have been presented or number of weeks provided for public consultation.
- 7.22 The Committee believes that the report from the Expert Reference Group which examined DV301 and DV303 should have been released with DV306, so that the public could see the full debate and the expert consensus on particular issues. It was only released when the Committee received DV306, despite calls for its earlier release.
- 7.23 The Committee heard throughout its inquiry of the dissatisfaction with the process. And while the Committee acknowledges that unhappiness with the outcomes may lead stakeholders to criticise the process, nevertheless, the Committee considers that improvements to the consultation and engagement process could be made.
- 7.24 The Committee also considers that the Minister should explore the possibility of introducing a more flexible timeframe for consideration of a draft variation by the Committee. The Committee notes for example that the *Planning and Development Act 2007* does not provide for a situation where an election falls within the time allowed for the Committee to consider a draft variation.

44 STANDING COMMITTEE ON PLANNING, PUBLIC WORKS AND
TERRITORY AND MUNICIPAL SERVICES

8 SECONDARY RESIDENCES

- 8.1 There are two types of temporary secondary dwellings defined under the current Territory Plan: habitable suites and relocatable units, both of which were introduced as part of Variation to the Territory Plan No. 55.¹⁴⁰
- 8.2 Under the current Territory Plan, a habitable suite is defined as ‘a room or suite of rooms which is capable of being occupied as a separate domicile within a dwelling but easily reverted to being rooms forming part of that dwelling’,¹⁴¹ and must satisfy the following requirements:
- the applicant must submit a statutory declaration stating that, while the habitable suite is occupied as a separate domicile, at least one of the persons resident in the habitable suite is providing care to or receiving care from an occupant of the main dwelling for reasons of infirmity (due to age) or disability;¹⁴²
 - it is demonstrated and documented how the habitable suite will be integrated into the dwelling, and how kitchen facilities will be removed when the care is no longer required;¹⁴³ and
 - the habitable suite has a maximum gross floor area of 70m² and includes one parking space in addition to that required by the main dwelling.¹⁴⁴
- 8.3 Similar provisions apply to a ‘relocatable unit’,¹⁴⁵ which is defined under the existing Territory Plan as ‘a room or suite of rooms capable of being occupied

¹⁴⁰ Variation to the Territory Plan No. 55: *Residential Land Use Policies. Territory Plan Written Statement. Provisions for Temporary Care Accommodation*, February 1997.

¹⁴¹ *Territory Plan 2008*, Part 13 *Definitions*.

¹⁴² *Multi Unit Housing Development Code (MUHDC)*, Part D – Development Type Controls – Other Forms of Residential Development and Non-Residential Development, Element 1: Restrictions on Use, Sub-Element 1.3 Habitable Suite, R250 [a mandatory requirement] (NI2008-27, p. 97).

¹⁴³ *MUHDC*, Part D – Development Type Controls – Other Forms of Residential Development and Non-Residential Development, Element 1: Restrictions on Use, Sub-Element 1.3 Habitable Suite, C251 (NI2008-27, p. 97).

¹⁴⁴ *MUHDC*, Part D – Development Type Controls – Other Forms of Residential Development and Non-Residential Development, Element 1: Restrictions on Use, Sub-Element 1.3 Habitable Suite, R253 [note this is not a mandatory requirement and has an associated criterion] (NI2008-27, p. 97).

as a separate domicile which is designed and constructed in a manner which enables it to be easily transferred to and/or re-erected on another site'.¹⁴⁶

- 8.4 Relocatable units have additional specifications, namely that the unit is sited and designed so that the wall height does not exceed 3.5m; it is at the rear of the main dwelling; and, the minimum setback from any window or opening in a wall of the main dwelling is 3.5m.¹⁴⁷
- 8.5 Draft Variation to the Territory Plan No. 306 – Residential development, estate development and leasing codes (DV306) proposes to replace the 'habitable suite' and 'relocatable unit' development sub-categories with a new form of residential development called 'secondary residence'.
- 8.6 DV306 defines a 'secondary residence' as 'a second *dwelling* on a *block*'.¹⁴⁸
- 8.7 Element 1 of the proposed new Single Dwelling Housing Development Code and Element 5 of the proposed new Residential Zones Development Code (RZDC), which apply to secondary residences, require that there is only be one secondary residence on a block,¹⁴⁹ and that the block must be a minimum 500m².¹⁵⁰ Similarly, a variation to a lease to authorise a secondary residence may be approved only where the block affected by the lease is 500m² or larger.¹⁵¹
- 8.8 The issue of secondary residences including the proposed size limit was covered in the issues paper, *Special residential and non-residential uses in residential zones*,¹⁵² which was released for public comment in 2009.
- 8.9 While there was strong support for secondary residences,¹⁵³ several witnesses contended that it would be preferable if the maximum Gross Floor Area could

¹⁴⁵ See MUHDC, Part D – Development Type Controls – Other Forms of Residential Development and Non-Residential Development, Element 1: Restrictions on Use, Sub-Element 1.4 Relocatable Unit, R254 and R256 (NI2008-27, pp. 97-98).

¹⁴⁶ *Territory Plan 2008*, Part 13 *Definitions*.

¹⁴⁷ See MUHDC, Part D – Development Type Controls – Other Forms of Residential Development and Non-Residential Development, Element 1: Restrictions on Use, Sub-Element 1.4 Relocatable Unit, R256 [this is not a mandatory requirement] (NI2008-27, p. 98).

¹⁴⁸ Draft Variation to the Territory Plan No. 306, Appendix G.

¹⁴⁹ Draft *Residential Zones Development Code*, Element 5, R16.

¹⁵⁰ Draft *Residential Zones Development Code*, Element 5, R13.

¹⁵¹ Draft *Lease Variation General Code*, Element 4, R6.

be larger than the proposed 75m², although there was some disagreement about by how much.¹⁵⁴

- 8.10 The Minister for the Environment and Sustainable Development (the Minister) advised the Committee that:

A limit of 75m² for a secondary residence was chosen to differentiate this form of accommodation from dual occupancy development. Dual occupancy development is permissible in all residential zones but is subject to additional controls that are suited to the larger dwellings that are typically involved. Increasing the size limit for secondary residences to 90m² would make them more like dual occupancies and bring with it the risk of making such developments more controversial.¹⁵⁵

- 8.11 The Housing Industry Association questioned the introduction of a restricted form of secondary residence when the capacity to build a second house on a block of land already exists.¹⁵⁶
- 8.12 The Planning Institute of Australia submitted that the issue of whether a development application which is lodged for two dwellings on a block will be considered as a single dwelling plus a secondary residence or as a dual occupancy should be clarified.¹⁵⁷
- 8.13 The Australian Institute of Architects also argued against the rule preventing a secondary residence being built at the same time as a knockdown/rebuild of the principal residence, and suggested that the second residence be allowed at the same time as that development.¹⁵⁸
- 8.14 In response, the Minister advised the Committee that '[n]othing in the proposed controls for secondary residences in DV306 would prevent a

¹⁵² ACT Planning and Land Authority, *Special residential and non-residential uses in residential zones: Issues paper*, November 2009.

¹⁵³ See for example, Submission No. 9, p. 2; Submission No. 11, p. 3; Submission No. 18, p. 1; *Transcript of Evidence*, 6 July 2012, p. 85.

¹⁵⁴ *Transcript of Evidence*, 6 July 2012, p. 85; *Transcript of Evidence*, 11 July 2012, pp. 135, 137; *Transcript of Evidence*, 18 July 2012, p. 224; *Transcript of Evidence*, 18 July 2012, pp. 265–266.

¹⁵⁵ Answer to Question on Notice No. 4, dated 16 August 2012.

¹⁵⁶ *Transcript of Evidence*, 18 July 2012, pp. 239–240.

¹⁵⁷ Submission No. 8, p. 13.

¹⁵⁸ *Transcript of Evidence*, 18 July 2012, p. 266.

secondary residence being constructed at the same time as the associated primary residence.’¹⁵⁹

- 8.15 The Committee agrees that secondary residences are a positive proposal enabling limited densification of existing suburban areas without significant change to the existing suburban character.
- 8.16 However, while the Committee understands the rationale for the decision to include a requirement for a car parking space to be provided for a secondary residence, it considers that some flexibility should be allowed to account for individual circumstances.
- 8.17 The Committee considers that a criterion which allows for future needs to be accommodated and planned for in the design may make the secondary residence concept a more viable one.

RECOMMENDATION 9

- 8.18 **The Committee recommends that proposed mandatory Rules 22 and 23 of the Residential Zones Development Code include associated criteria to remove the requirement for a secondary residence car parking space, while ensuring that the dwelling design allows for any future car parking needs to be met.**
- 8.19 In addition, the Committee suggests that ‘relocatable unit’ and ‘habitable suite’ be added to the list of Redundant Definitions in Appendix G of DV306.
- 8.20 The Committee also suggests that the rules relating to secondary residences could be re-ordered to list all mandatory requirements ahead of those with associated criteria, followed by criteria without associated rules.
- 8.21 The Committee considers that C12 of the draft RZDC could be rephrased to make clearer the reference to access by resident(s) of the secondary dwelling to facilities within the primary residence.
- 8.22 The Committee notes that the current definition of multi-unit housing is:

¹⁵⁹ Answer to Question taken on Notice No. 9, dated 16 August 2012.

Multi-unit housing means the use of land for more than one dwelling and includes but is not limited to dual occupancy housing and triple occupancy housing.¹⁶⁰

- 8.23 The Committee also notes the comment made in DV306 that '[t]he addition of a secondary residence to a single dwelling house creates multi unit housing' but that it is not appropriate for such development to fall under the Multi Unit Housing Development Code.¹⁶¹ The Committee suggests that the definition of 'dwelling' or 'multi-unit housing' be amended to make clear that secondary residences do not constitute multi-unit housing.

Lease Variation Charge

- 8.24 A Lease Variation Charge (LVC)¹⁶² is payable where a Crown lease is varied in such a way that it increases the value of the lease.¹⁶³
- 8.25 The Committee notes that there was some confusion about the applicability of the lease variation charge to secondary residences.¹⁶⁴ In response, officials from the Environment and Sustainable Development Directorate advised:

...secondary residences cannot be unit titled, so, therefore, there is no need to vary the lease. In most circumstances secondary residences occur in older areas where the lease provides for residential purposes. Again, just in terms of having the secondary residence, there is no need to vary the lease. The only time that you would need to seek to vary the lease is if the lease specifically mentioned a single residence. If that were the case, there may be a need for a lease variation charge. But, again, as I said, we have not yet put our position to government as to whether or not they

¹⁶⁰ *Territory Plan 2008*, Part 13 *Definitions*.

¹⁶¹ Recommended Draft Variation to the Territory Plan No 306 Residential Development, estate development and leasing codes, p. 26.

¹⁶² Formerly Change of Use Charge.

¹⁶³ ACT Environment and Sustainable Development Directorate, Change of use charge – Lease variation charge http://www.actpla.act.gov.au/topics/design_build/finances/cou_charge accessed 24 August 2012.

¹⁶⁴ *Transcript of Evidence*, 6 July 2012, p. 85.

would like to utilise the provisions in the act for omission of it. But it is an issue we are alert to and we are doing some thinking around that.¹⁶⁵

RECOMMENDATION 10

- 8.26 **The Committee recommends that the Government provides advice on the likely application of the Lease Variation Charge to secondary residences as a matter of urgency.**

¹⁶⁵ *Transcript of Evidence*, 25 July 2012, pp. 331–332.

9 'DESIRED CHARACTER' AND OTHER TERMS

- 9.1 The Committee heard a range of concerns about the terminology used in DV306 and the associated codes, including that much of the wording in the Territory Plan and associated codes is unclear,¹⁶⁶ infused with planning jargon,¹⁶⁷ and that many terms are open to interpretation¹⁶⁸ or undefined.¹⁶⁹

Desired character

- 9.2 Particularly contentious was the use and interpretation of the term 'desired character'.
- 9.3 The Australian Institute of Landscape Architects observed that 'the lack of clarity of the "desired character" as set out in the zone objectives makes it open to diverse interpretations.'¹⁷⁰
- 9.4 The Griffith / Narrabundah Community Association argued that the definition of 'desired character' 'still falls short of what is needed' and submitted that 'Neighbourhood Plans should be regarded as the primary source of descriptions of "desired character" for particular neighbourhoods'.¹⁷¹
- 9.5 The Planning Institute of Australia (ACT Chapter) (PIA) commended the planning authority's inclusion in its fact sheets of the intended desired character for each zone, stating that they 'greatly enhance the understanding of acceptable development outcomes and benchmark community expectations.' The PIA observed, however, that such visual material would need to be updated regularly 'to ensure the interpretation of character for each

¹⁶⁶ Submission No. 4, p. 4.

¹⁶⁷ Submission No. 13, p. 2.

¹⁶⁸ *Transcript of Evidence*, 11 July 2012, p. 119.

¹⁶⁹ Submission No. 4, p. 4.

¹⁷⁰ Submission No. 3, p. 2. Submission 12, p. 3 also refers to a lack of clarity in the definition of 'desired character'.

¹⁷¹ Submission No. 4, p. 6.

zone retains a currency to enable innovative design solutions that fit within the context and locality.’¹⁷²

- 9.6 Officials from the Environment and Sustainable Development Directorate (the Directorate) acknowledged concerns about the term ‘desired character’. It noted:

... “desired character” itself is commonly used in the codes at present, so it not a new term in that respect. In some instances in the current codes the term is used as “future desired character” or “current desired character”, or terms of that sort, as though there is a choice between the two. That is a difficulty with “desired character”.

Desired character is the character of an area, a neighbourhood, a precinct that the plan aspires to. In some cases, desired character will be as it is at the moment. ...

At the other end of the scale, however, there are other zones which anticipate change—the inner north is one of those—where the provisions of the codes and the territory plan more broadly anticipate that single dwellings will be removed eventually and replaced with higher density development.¹⁷³

- 9.7 In response to continuing community concerns about the interpretation of ‘desired character’, the Directorate advised:

... we have proposed that the definition of “desired character” incorporate particular statements of desired character that are embedded in a precinct code.

Each suburb in the city would have a particular statement of desired character. ...

We are in the process of creating a precinct code for every suburb in the city at the moment so we have a place where such statements can be lodged. They will be taken seriously, because every time an assessing officer has to determine whether the departure from the rule is consistent with the criterion, and that criterion contains the words “desired

¹⁷² Submission No. 8, p. 12.

¹⁷³ *Transcript of Evidence*, 4 July 2012, p. 50.

character”, that assessment officer would need to look then not only at the objectives of the zone to determine desired character but also at the particular precinct code and the words in the precinct code.¹⁷⁴

9.8 The Directorate also advised that the proposal to define the ‘desired character’ of a suburb would involve a full variation to the Territory Plan.¹⁷⁵

9.9 The need for a more suburb-based, strategic approach to defining ‘character’ was a common theme, and was enunciated by the Vice President of the Gungahlin Community Council:

Perhaps there needs to be a master plan to define a streetscape and define a character for a region, whether it is a town centre, whether it is a precinct or community master plan, whatever it is. That probably needs to be in place before you start the development. It may be, in fact, there would be an open tender to define a streetscape or a desired character for a portion of an area.¹⁷⁶

9.10 Some witnesses considered the term ‘desired’ character to be problematic:

I tend to use the words, particularly in relation to the older suburbs, “established character”, because “desired character”, you could argue, is going to come from redevelopments that have taken place that the local community regard as inappropriate. I think the “desired character” definition is problematical.¹⁷⁷

9.11 5AAP, conversely, submitted that the term ‘desired character’ should be changed to ‘future desired character’.¹⁷⁸

9.12 The Inner South Canberra Community Council contended:

One of the things in particular with this flat-earth approach is that draft variation 306, a lot of us believe, ignores the established character of our older suburbs. It treats the older suburbs in the same way as newer

¹⁷⁴ *Transcript of Evidence*, 4 July 2012, pp. 50–51.

¹⁷⁵ *Transcript of Evidence*, 4 July 2012, p. 51.

¹⁷⁶ *Transcript of Evidence*, 11 July 2012, pp. 152–153.

¹⁷⁷ *Transcript of Evidence*, 11 July 2012, p. 113.

¹⁷⁸ Submission 21, p. 4.

suburbs with very different block sizes and very different characteristics.¹⁷⁹

Reasonableness

- 9.13 While some considered that DV306 was an improvement on DV301 and DV303 in terms of the clarity of language,¹⁸⁰ an overwhelming concern expressed in submissions and by witnesses was the inclusion of the term *reasonable* in various parts of the draft variation.
- 9.14 The Planning Institute of Australia (ACT Chapter) (PIA) argued that the ‘use of ambiguous language such as “reasonable” and by implication the “reasonableness test” ... is not best practice or meets the Development Assessment Forum (DAF) model recommendations.’¹⁸¹ The PIA argued that:
- ...the unregulated use of the expression “reasonable” has the potential to open the legislation to interpretation by disaffected persons. For instance, adjacent landowners, and developers can be said to have a reasonable expectation from their interpretation of planning codes. However, the reasonable expectation of the disaffected person and the reasonable interpretation of a consent authority may be widely different.¹⁸²
- 9.15 To illustrate its concern, the PIA used the example of ‘affordable housing’, which has a specific meaning to a ‘technically literate person’ of ‘housing that can be afforded by the lower quartile of the house purchasing public.’ However, the PIA argued that ‘[t]o a reasonable person, “affordable housing” may have the same meaning as housing that is affordable, in other words finds a market’ and that in this case a ‘reasonable interpretation’ is different for a common person and a planning authority.’¹⁸³ The PIA submits therefore that

¹⁷⁹ *Transcript of Evidence*, 11 July 2012, p. 110.

¹⁸⁰ See for example, Submission No 1, p. 3.

¹⁸¹ Submission No. 8, p. 10.

¹⁸² Submission No. 8, p. 10.

¹⁸³ Submission No. 8, p. 10.

‘reasonableness should be limited to the interpretation of the reasonable consent authority’.¹⁸⁴

9.16 In its submission, the Property Council of Australia stated that the use of ‘reasonable’ as an assessment criterion ‘is subjective and lacks clarity of what would be considered reasonable.’¹⁸⁵

9.17 The Australian Institute of Landscape Architects (AILA) similarly criticised the use of ‘reasonable’, submitting that it would ‘invite referral to the AAT and make decisions by that body highly subjective in nature.’ AILA noted that:

[t]he DAF guidelines for writing rules expressly highlights the example of ‘reasonable’ stating that it is unclear as to how the reader could comply with the requirement.¹⁸⁶

9.18 The Griffith / Narrabundah Community Association (GNCA) emphasised the point:

ACTPLA or ESD dismiss all this by saying, “The term ‘reasonable’ is well understood legally.” Well, yes, it is. “Reasonable” means what the man on the Clapham omnibus would regard as reasonable. I do not have any idea what the man on the Clapham omnibus would think about ACT planning law. It is not a good test. If you say, “We’ve got to be modern,” let us talk to the man on the Belgrave train or in Canberra on the bus to Banks. But he is not going to have any idea either. These things may be clear to people who have been initiated into the planning profession, but to the rest of us it is completely opaque. I suspect it is not clear to people in the planning profession either.”¹⁸⁷

9.19 Officials from the Directorate advised the Committee that the term ‘reasonable’ was a ‘common subjective assessment tool in a range of legislative environments’.¹⁸⁸ In relation to its use in the Territory Plan and DV306, the Directorate explained:

¹⁸⁴ Submission No. 8, p. 10.

¹⁸⁵ Submission No. 2, p. 2.

¹⁸⁶ Submission No. 3, p. 2.

¹⁸⁷ *Transcript of Evidence*, 11 July 2012, p. 119.

¹⁸⁸ *Transcript of Evidence*, 4 July 2012, p. 48.

The term is typically used in the criteria, which by their nature are somewhat subjective. But typically those criteria have quantitative rules associated with them, and often those rules are the triggers by which a particular proposal can trip from one development track into another. For instance, with a single residential development, if you comply with all of the quantitative rules your application can be classified as exempt and thereby you can get your building approval by a private certifier. But if you have to have your application assessed against the qualitative criteria, that makes it a merit-based application, which means that it has to be assessed by professionals in the planning agency. They are dealing with these sorts of issues on a regular basis and they are using professional judgement—they are trained professionals—to make these sorts of decisions. It is not an uncommon term in legislative drafting. In fact, it is used quite regularly.¹⁸⁹

- 9.20 Directorate officials stressed that it was not the role of the applicant to determine what was ‘reasonable’:

In the end, it is the decision maker, the determining authority—the ACT Planning and Land Authority, first of all, in its role as development assessor or in terms of a tribunal review of that where the tribunal stands in the same shoes as the assessing officer. The applicant has a role to determine, for example, if the code says, and it does, that instead of complying with the rule it is necessary for compliance with the criteria.¹⁹⁰

- 9.21 Officials from the Directorate acknowledged that ‘[a]ssessment officers will have different views about what is reasonable ... because that is the nature of the qualitative assessment’, but observed:

To avoid that, we would have no criteria at all or we would insert metrics into the criteria so that we would say that, no matter what you do, you cannot have less than 50 per cent of sunlit private open space. But that is just like having a rule. In fact, it is a rule. You will notice that we do not try to limit the amount of discretion that can be applied through the

¹⁸⁹ *Transcript of Evidence*, 4 July 2012, pp. 47–48.

¹⁹⁰ *Transcript of Evidence*, 4 July 2012, p. 48.

application of metrics into our criteria. Now I am getting into the realms of the actual drafting of the particular code, but I am hoping that that will convey some of the reasoning behind the mechanism by which we apply qualitative assessments.¹⁹¹

9.22 Directorate officials also addressed concerns raised about several other terms:

The term “density” is not used as a development control, as such, in the territory plan. There are various surrogates—things like plot ratio, site coverage and things like that—which are defined. “Density”, on the surface, seems like a relatively simple term to define but it is actually very contingent on the area that you apply it to. For instance, do you include roads or not include roads; do you include the open spaces within a suburb or not include the open spaces within a suburb? Various suburbs have very different contexts because of their physical characteristics. So you can get very misleading indications if you do not use the term very carefully and very cautiously.

Terms like “affordability” and “sustainability” are notoriously difficult to define. If we did end up defining them in the territory plan I think they would be defined in a way which would probably not address the issues that people are concerned about. By their nature, they are very subjective terms which are difficult to pin down for the purposes of what the territory plan is all about, which is about assessing specific developments when a development application is lodged.¹⁹²

9.23 The Committee acknowledges concerns regarding the use of terms like ‘desired character’, particularly for older suburbs where there may be a preference for retaining the ‘established character’ of the suburb. While it is important to ensure that heritage areas are protected and the Garden City character of the city is retained, the Committee is also cognisant of the need for a city like Canberra to grow sustainably and that it is important not to permanently lock an area into a particular form of development.

¹⁹¹ *Transcript of Evidence*, 4 July 2012, p. 48.

¹⁹² *Transcript of Evidence*, 4 July 2012, p. 49.

- 9.24 Notwithstanding this view, the Committee considers that the pattern of any future changes should be identified well in advance and discussed with all stakeholders before changes are incorporated into a draft variation.

10 NEIGHBOURHOOD PLANS AND PRECINCT CODES

- 10.1 The ACT has 16 neighbourhood plans covering the following suburbs: Braddon, Deakin, Dickson, Downer, Forrest, Garran, Griffith, Hackett, Hughes, Lyneham, Narrabundah, O'Connor, Red Hill, Turner, Watson, and Yarralumla.¹⁹³
- 10.2 The Governance section of the Territory Plan (the Plan) outlines its position in the overarching planning framework for the ACT, and provides an overview of the Plan's object, functions and structure. The section states that:
- The Plan replaces all master plans, neighbourhood plans, guidelines etc that were listed on the Authority's Register of Planning Guidelines prior to the commencement of this Plan.
- However, those documents remain as ACTPLA publications and can be referred to in Codes within the Plan.¹⁹⁴
- 10.3 Under the current Plan, reference to neighbourhood plans are included in the Multi Unit Housing Development Code (MUHDC) as follows:
- Where a Neighbourhood Plan exists, development demonstrates a response to the key strategies of the relevant Neighbourhood Plan.¹⁹⁵
- 10.4 Officials from the Environment and Sustainable Development Directorate (the Directorate) did not support the reinstatement of references to neighbourhood plans in the MUHDC, primarily because they 'often contain provisions that are not well suited to the assessment process.'

¹⁹³ These neighbourhood plans may be downloaded at www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/neighbourhood_plans

¹⁹⁴ NI2008-27 *Territory Plan* (effective 22 January 2010), Section 1.1 Governance, p. 2.

¹⁹⁵ *MUHDC*, Part C – Development Type Controls, Part C (1) – Multi Unit Housing, Element 5: Amenity, 5.2 Neighbourhood Plans, C87; Part C(3) – Multi Unit Housing – Inner North Canberra and Gungahlin District – RZ3 and RZ4 Zones, Element 5: Amenity, 5.2 Neighbourhood Plans, C147; and, Part C(5) – Multi unit housing – Apartments of three (3) storeys or more in other areas and all multi unit housing in the commercial zones, Element 5: Amenity, 5.3 C224.

- 10.5 In response to concerns about the removal of the references to ‘neighbourhood plans’ in the codes associated with Draft Variation to the Territory Plan No. 306 – Residential development, estate development and leasing codes (DV306), officials from the Directorate observed:

Whilst the neighbourhood plans themselves were not particularly conducive to being put into a code or to being part of the assessment process, they did have the core, in some cases—not in all cases but in some—of describing what the future desired character or the desired character of a particular community should be; hence the change in the definition to allow an appropriate statement to come in in a precinct code.¹⁹⁶

- 10.6 The Minister for the Environment and Sustainable Development (the Minister) added:

... in relation to the question of neighbourhood plans, as you would be aware, neighbourhood plans were developed in the context where they did not have any statutory effect. The Administrative and Civil Appeals Tribunal when looking at a number of disputes where the application on a neighbourhood plan has been raised as a relevant consideration has concluded quite clearly that neighbourhood plans are unable to be used in assessing whether or not a development proposal is consistent with the provisions of the territory plan because they do not have statutory effect. Therefore, the position of the government and of the Planning and Land Authority has been to ensure that, where relevant, provisions of neighbourhood plans are incorporated into precinct codes where they exist for certain parts of the city.

For example, there are precinct codes in place for a range of centres around the city. A good example is Kingston where desired character reflected through a master planning process and identified through a master planning process is now reflected in statutory controls in a precinct code. Similar work is occurring now at Dickson and at a range of other sites across the territory. Residents, I think, would welcome the fact

¹⁹⁶ *Transcript of Evidence*, 4 July 2012, p. 50.

that there is clarity around what characteristics are given statutory recognition in a precinct code.

I appreciate that some residents would like to see a broader range of matters included in existing neighbourhood plans incorporated into precinct codes, and those are matters which the government keeps under close review and seeks to incorporate wherever appropriate. Some comments and some of the outcomes of the neighbourhood plans are so general in nature—sometimes—that it is difficult to have them reflected specifically in the precinct codes. We have to have close regard to what does and does not go into a precinct code.¹⁹⁷

10.7 Noting the extensive community consultation that had been undertaken in the development of neighbourhood plans, concerns were raised about the manner in which suburban precinct codes would be prepared.

10.8 Officials from the Directorate advised:

A new precinct code would be introduced through a variation to the territory plan; that is the general practice.

As to ... the introduction, for instance, of statements of desired character into a suburb precinct code is something that would have to be done by way of a full variation to the territory plan. Not everyone will have the same view around what the desired character of a particular suburb would be ...

Those sorts of things would need to be the outcome of a proper planning process. The planning authority has got a program of master plans that are leading to precinct codes. I cannot say how long it will take before we would have these things in place, but at least the way the system is being structured will provide a framework to incorporate these things and for them to be taken into consideration should such a statement be incorporated within one of these codes.¹⁹⁸

¹⁹⁷ *Transcript of Evidence*, 25 July 2012, p. 332.

¹⁹⁸ *Transcript of Evidence*, 4 July 2012, p. 51.

10.9 The Minister added:

Generally the intent of the government with master planning is to recognise that change and redevelopment will largely occur around centres. That is the broader strategic planning direction as reflected in both the current spatial plan and the draft planning strategy. The focus is on accommodating growth around centres and along corridors. So the master planning work will largely reflect that broader strategic objective, which is accommodating growth around centres and along corridors.

By implication that means that the government does not see significant growth or change in most low density RZ1, RZ2 areas. There will be some change—organic change—as householder preferences change and some redevelopment occurs. But it will be modest in scale and it will not be change that fundamentally alters the character of those areas.

Therefore, where areas are going to be subject to more significant change which does have the potential to impact on the existing character of an area, that is where the master planning effort is focused. So it is focused around centres, and the higher density zonings that exist close to those centres, or it is focused along corridors where the same considerations apply.¹⁹⁹

10.10 The Weston Creek Community Council (WCCC) pointed out what it considered to be confusing about how the master planning process would translate into a precinct code:

With neighbourhood plans, we understand that you received considerable comment about neighbourhood plans with rather polarised opinions. Half went one way and half went the other way. Although these plans were not mentioned in DV 306, we consider that they remain of considerable importance to residents, particularly in identifying the design character of a neighbourhood. Tom mentioned that people do not like to see things radically changing. It is noted that you consider zone objectives should be distilled from what the precinct code says is the desired character, and this will be considered when a development

¹⁹⁹ *Transcript of Evidence*, 4 July 2012, p. 52.

application is made. However, what happens when there is neither a precinct code nor a neighbourhood plan, as is the case in Weston Creek?

...

The process by which a master plan could evolve into a precinct code has not been adequately explained to the community. This is particularly the case in Cooleman Court, where we are currently undergoing that process. It reflects the complicated nature of planning legislation which is not fully understood by the community. This is of considerable concern considering the master plan currently going on.²⁰⁰

- 10.11 The WCCC also underlined an important element of the neighbourhood planning process, that of the production of a document that is understood and accessible to the wider community. The absence of both a neighbourhood plan and a precinct code for a community caused concern:

I would like to go on to linking to neighbourhood plans, which are important to residents. In some cases a lack of both neighbourhood plans and a precinct code leaves a void, and they do not know what is going to fill that void.²⁰¹

- 10.12 While the Committee respects the planning and land authority's position that neighbourhood plans have no statutory basis, nevertheless they constitute an easily understood expression of, among other things, the desired current and future character of a particular suburb or area of Canberra. The Committee also notes that the process of engaging with the community in the development of neighbourhood plans built up a level of trust between stakeholders.

- 10.13 In commenting on the nature of the precinct codes currently incorporated in the Territory Plan and the process by which the Inner South Canberra Community Council (ISCCC) envisages engaging with government on the development of local plans, an ISCCC council member stated:

²⁰⁰ *Transcript of Evidence*, 11 July 2012, p. 136.

²⁰¹ *Transcript of Evidence*, 11 July 2012, p. 137.

... we have suggested there that the council work with the community and with the ACT government on a strategic plan for the development of inner south Canberra so that we develop a strategic approach that would look at avoiding spot development and would come to a view with the community about what are the key elements of the suburbs that we live in and that we would like to retain. And then we would move from that strategic approach to supporting the review, development and recognition of local plans for inner south suburbs and advocating their inclusion in the territory plan. ...

At the moment, as far as I am aware, even the latest DV 306 has taken out reference to neighbourhood plans.

While that is the case, there is nothing there to protect the existing character of the inner south suburbs. So we would ideally like to work with the ACT government on these elements that would then follow up with what our members have said that they would like, and that would perhaps give us a more strategic approach to development in the inner south that then will mean that we do not have as many complaints to ACAT when there are particular development applications going through that offend the views of people in those suburbs about what the character of their suburb should be like.²⁰²

- 10.14 Ms Margaret Fanning also highlighted the consultation processes that were adopted during the preparation of neighbourhood plans as suitable for the development of precinct codes:

Precinct codes certainly offer scope in the future, but they are all rudimentary, as has been noted this morning. They need much more work and development in consultation with the local community before they can be regarded as an adequate substitute. The question was asked earlier as to how they might be developed. I think there was quite a good process when the neighbourhood plans were developed. They were developed by ACTPLA in consultation with community groups and others whom ACTPLA identified as being important stakeholders. There

²⁰² *Transcript of Evidence*, 11 July 2012, pp. 110–111.

were quite a lot of workshops; an iterative process. I think at the time all parties were pretty satisfied with them. It seems to me that the process was a good one that and if more definition and specificity are required for precinct codes that can be included as part of that process.²⁰³

- 10.15 The Griffith / Narrabundah Community Association (GNCA), also questioned the coverage of future precinct codes:

There is already in existence an inner north Canberra precinct code, which was developed by consultation between ACTPLA and the residents groups in north Canberra. I would imagine a similar model would be used or could be used in south Canberra. I always thought that precinct codes were supposed to cover a somewhat larger area than neighbourhood plans, but the way the government or EDS have chosen to implement the references to precinct codes is to produce 70 precinct codes, one for each suburb.²⁰⁴

- 10.16 The proposed removal of references to neighbourhood plans continues to be a matter of concern to a number of community groups, with many recommending that they be retained until appropriate precinct codes have been developed, particularly with respect to describing the ‘desired character’ of a suburb.²⁰⁵

- 10.17 The GNCA argued that ‘Neighbourhood Plans and the need to demonstrate a response to the Key Strategies they contain should be retained as the primary source of descriptions of “desired character” for particular neighbourhoods.’²⁰⁶

- 10.18 While supporting the revised definition of ‘desired character’ in the recommended version of DV306, the GNCA submitted that ‘existing Neighbourhood Plans should be retained until appropriate Precinct Codes have been developed and are in place.’²⁰⁷ The GNCA was critical of the standard of the suburban precinct codes introduced in November 2011 and

²⁰³ *Transcript of Evidence*, 11 July 2012, p. 130.

²⁰⁴ *Transcript of Evidence*, 11 July 2012, pp. 124–125.

²⁰⁵ See for example Submission No. 4, pp. 5–6, Submission No. 14a, p. 2; Submission No. 15.

²⁰⁶ Submission No. 4, p. 5.

²⁰⁷ Submission No. 4, p. 5.

recommended that provisions relating to the precinct codes be reworded to ensure that current neighbourhood plans remain in force until an appropriate precinct code has been developed through community consultation.²⁰⁸

10.19 Noting that neighbourhood plans had been developed following extensive consultation with local communities and notwithstanding the Directorate's position that their provisions were not well suited to assessment processes, the GNCA observed that they could be 'very valuable in defining existing and desired character amongst other things and also in providing guidance on site specific matters.'²⁰⁹

10.20 Ms Margaret Fanning stated that the planning and land authority had used a neighbourhood plan to reject a development application:

Although ESD have argued that neighbourhood plans are being abandoned because they often contain provisions that are not suitable for the assessment process, they have in fact used them for the assessment process. I think there are a number of people in this room who would be aware that ACTPLA used the Red Hill neighbourhood plan to knock back proposals relating to the Morling Lodge redevelopment.²¹⁰

10.21 The Committee notes the ACT Civil and Administrative Tribunal's (ACAT) conclusion that the Morling Lodge redevelopment proposal, even as revised, 'still cannot, in our view, be said to be within a low density environment nor can it be said to respect and contribute to the neighbourhood.' The decision continued:

It remains therefore inconsistent with the first and second objectives of an RZ1 zone. Nor do we consider that what is proposed would be sympathetic to the existing garden suburb neighbourhood character in terms of scale and form and hence, ..., it does not adequately address one of the key strategies of the Red Hill Neighbourhood Plan.²¹¹

²⁰⁸ Submission No. 4, p. 6.

²⁰⁹ Submission No. 4, p. 5.

²¹⁰ *Transcript of Evidence*, 11 July 2012, pp. 129–130.

²¹¹ *Baptist Community Services NSW and ACT v ACT Planning and Land Authority & Others (Administrative Review)* [2012] ACAT 58, paragraph 181.

10.22 The Weston Creek Community Council was also disappointed at the removal of references to neighbourhood plans:

Overall [Weston Creek Community] Council supports the development of neighbourhood plans taking into account the local conditions and especially constraints. This provides an opportunity for local residents to input into the plans which engenders both a sense of ownership and responsibility. The development of these neighbourhood plans can act as an exercise in building trust between Government, Planners and residents which can be a very valuable asset at times of major development. This is something which we see as missing at the moment and which the community would say has been missing for a number of years.²¹²

10.23 Ms Margaret Fanning contended that the argument that the main features of neighbourhood plans had been incorporated into the Territory Plan ‘simply does not stand up to scrutiny’, and maintained that if their provisions are not suitable for assessment processes ‘the appropriate course would be to update and amend them as necessary, rather than abandoning them.’²¹³

10.24 Ms Fanning also submitted:

It is essential that planners recognise the importance of acknowledging differences between neighbourhoods and that development plans and requirements reflect those different needs and preferences.²¹⁴

10.25 The majority of the suburban Precinct Codes were introduced as part of Draft Variation to the Territory Plan No. 302 Community Facility Zone, and primarily identify Community Facility Zoned sites where supportive housing and retirement villages are prohibited.

10.26 The Committee notes that the Directorate is proposing to create a precinct code for all suburbs which includes the ‘desired character’. The Committee regards this as an appropriate aim, but one which should only be undertaken with considerable community consultation.

²¹² Submission No. 11, p. 4.

²¹³ Submission No. 15, pp. 4–5.

²¹⁴ Submission No. 15, p. 4.

RECOMMENDATION 11

- 10.27 **The Committee recommends that community consultation on precinct codes should commence as soon as possible.**
- 10.28 The Committee notes that the current zone objectives of RZ1, in particular, are not consistent. For example, it is possible to have multi unit development in some RZ1 areas (other than dual occupancies). The visual material prepared by the Environment and Sustainable Development Directorate for RZ1 also includes apartments although in general they are not allowed in RZ1.

RECOMMENDATION 12

- 10.29 **The Committee recommends that as part of developing precinct codes, the objectives of the various zones should be clarified and standardised.**
- 10.30 The Committee also notes the considerable challenges that Canberra is facing in its development, including climate change, population growth, and demographic change. These should be considered in any discussion of 'desired character' for a suburb or in a precinct code.

RECOMMENDATION 13

- 10.31 **The Committee recommends that the definition of 'desired character' should be future looking to equip the suburb for anticipated changes.**

11 OTHER ISSUES

- 11.1 A range of other issues arising from Draft Variation to the Territory Plan No 306 – Residential development, estate development and leasing codes (DV306) were raised with the Committee and are covered briefly in this chapter.

Dual occupancies

- 11.2 The continued viability of dual occupancy housing was of interest to the Committee.

- 11.3 The Australian Institute of Architects observed that, over time, dual occupancies have been progressively ‘dying off’, and cited several reasons:

Cost increases, capacity of the second residence to be a viable residence et cetera meant it was always competing to survive. We acknowledge the subdivision requirement was done outside ACTPLA’s jurisdiction, but it ended up being the final nail in the coffin. It seems to be the response to the granny flat family unit that many people obviously said, “How are we going to be able to do that?” As we have pointed out here, we think it could be a better planning document.

But coming back to what we said earlier about the scale of residential development in Canberra, dual occupancies did occupy a pretty important part of just getting past the single unit on a large block of land as the extreme to the high rise in the town centre. The dual occupancy was playing a valuable role in increasing, in a small way, density in the suburbs, but we have lost that.²¹⁵

- 11.4 One of the changes affecting the suburban core zone (RZ2) is the reduction in block size to 700m² for dual occupancy housing. The planning and land authority advised that the rationale for the change was to make it consistent with the proposed multi unit housing density controls and to reinforce the

²¹⁵ *Transcript of Evidence*, 18 July 2012, p. 266.

distinction with RZ1. However, while this would mean that more RZ2 blocks could potentially be redeveloped as dual occupancies, officials from the Environment and Sustainable Development Directorate (the Directorate) suggested that due to other constraints, including restrictions under unit titling legislation, such an increase was more likely to be a theoretical rather than an actual outcome.²¹⁶

- 11.5 While the AIA expressed support for the proposed secondary residence policy,²¹⁷ it argued that both housing types should be promoted:

There are some benefits in that policy as is proposed. There are not great demands on car parking and things of that nature. From an affordable perspective end of the market, the family unit, the granny flat, could be quite acceptable. But I think ACTPLA is saying, “We’ve now introduced that; so we’re happy to say goodbye to dual occupancy.” We would say, “Why can’t you do both?” Why can’t the dual occupancy policy be resurrected and get rid of the subdivision costs?²¹⁸

- 11.6 In relation to the broader policy applying to dual occupancy housing, the Minister for the Environment and Sustainable Development (the Minister) noted that this form of development has been a contentious one for the community, with concerns raised in the past still valid today, including: establishing a pattern of development which precludes the future more efficient use of land, particularly in areas close to public transport corridors and shopping centres; changing urban character; reducing the amount of permeable surfaces on suburban blocks; and loss of vegetation and tree cover in residential areas.²¹⁹

- 11.7 The Committee considers that a possible outcome of the recent changes (which have interim effect) to the RZ2 requirements, is that dual occupancies will be encouraged. In some cases, as noted in Chapter 5, this will not be the optimal outcome.

²¹⁶ *Transcript of Evidence*, 4 July 2012, p. 59.

²¹⁷ Secondary residences are discussed in Chapter 8.

²¹⁸ *Transcript of Evidence*, 18 July 2012, pp. 266–267. See also *Transcript of Evidence*, 11 July 2012, p. 139, re support for dual occupancies on corner blocks.

²¹⁹ *Transcript of Evidence*, 25 July 2012, pp. 338–339.

- 11.8 The Committee notes that dual occupancies had been effectively stopped in RZ1 areas because of the restriction on unit titling. However there has not been a clear public explanation of the reasoning behind this. The Committee notes that in some cases secondary residences would serve the same function.

RECOMMENDATION 14

- 11.9 **The Committee recommends that the Environment and Sustainable Development Directorate articulates the reason for unit titling restrictions on dual occupancies in RZ1.**

Basements and attics

- 11.10 Concerns were raised about the inclusion of basements and attics in the calculation of Gross Floor Area (GFA).
- 11.11 In its submission to the planning and land authority consultation process, in relation to the RZ1 residential zone, the Master Builders Association of the ACT (MBA) stated:
- Any form of basement storage should not be included in the GFA ... [t]he exclusion of storage ... will have no impact on the scale of the building as this additional area is within the property boundary.²²⁰
- 11.12 The MBA expressed a similar concern about ‘attics’ arguing ‘[i]f the attic is within the roof space – which it should be – and controls are in place to prevent overlooking, then an attic provides an additional useful space without affecting the scale and bulk’, adding that ‘[n]atural lighting and ventilation can be provided with the use of roof windows.’²²¹
- 11.13 The Housing Industry Association suggested a possible solution:
- If there is concern, you can write your provision to specify which types of rooms are included in a plot ratio; so the storeroom-garage concept. You can create a definition, and I suspect there already is one, that will say

²²⁰ Submission No. 72 [ACTPLA consultation process], p. 3. See also *Transcript of Evidence*, 6 July 2012, p. 95; *Transcript of Evidence*, 18 July 2012, pp. 248–249.

²²¹ Submission No. 72 [ACTPLA consultation process], p. 3. See also *Transcript of Evidence*, 18 July 2012, p. 248; *Transcript of Evidence*, 18 July 2012, pp. 267–268.

that all habitable rooms and the garage are included or only habitable rooms but not the garage, not this, not that are included for the purposes of measuring plot ratio. You just need to specify it. Again, you need to specify it to avoid interpretation.²²²

- 11.14 The Territory Plan defines a storey as ‘a space within a building that is situated between one floor level and the floor level next above, or if there is no floor level above, the ceiling or roof above but does not include an attic or a basement.’²²³ GFA is defined as ‘the sum of the area of all floors of the building measured from the external faces of the exterior walls, or from the centre lines of walls separating the building from any other building, excluding any area used solely for rooftop fixed mechanical plant and/or basement car parking.’²²⁴
- 11.15 The Territory Plan also defines a ‘basement’ as ‘a space within a *building* where the floor level of the space is predominantly below *datum ground level* and where the *finished floor level* of the level immediately above the space is less than 1.0 metre above *datum ground level*.’²²⁵
- 11.16 The Territory Plan defines an attic as ‘any habitable space contained wholly within a roof pitched at not more than 36 degrees above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like.’²²⁶
- 11.17 The draft new Single Dwelling Housing Development Code (SDHDC) prohibits basement car parking where it is located directly below any two storey element of a single dwelling house.²²⁷ However, while basement car parking is not permitted on single dwelling blocks, where located directly

²²² *Transcript of Evidence*, 18 July 2012, p. 250.

²²³ *Territory Plan 2008*, Part 13 *Definitions*.

²²⁴ *Territory Plan 2008*, Part 13 *Definitions*.

²²⁵ *Territory Plan 2008*, Part 13 *Definitions*.

²²⁶ *Territory Plan 2008*, Part 13 *Definitions*.

²²⁷ DV306 Draft Single Dwelling Housing Development Code (SDHDC), Element 1.3 Attics and basement car parking – single dwelling blocks – RZ1, R4, p. 3.

below any two storey element of a single dwelling house, in RZ1, there is no stated restriction on basements.²²⁸

- 11.18 The Minister noted that the restriction on basement car parks for RZ1 was introduced as part of Variation to the Territory Plan No 200. He explained:

The exclusion of basement car parking while allowing for other forms of basements stems from the fact that basement car parking typically requires a driveway to be cut into the site to enable vehicle access. Such driveways potentially have a significant impact on the streetscape, exacerbated where associated with two storeys above the basement entry. In this case the building typically presents a three storey facade to the street. Other forms of basement do not raise the same issues.²²⁹

- 11.19 The prohibition on attics in single dwelling houses, where located directly above any two storey element of the single dwelling house, in RZ1 – Suburban Zone (RZ1), has been carried over from the existing Single Dwelling Housing Development Code (SDHDC).²³⁰
- 11.20 The current SDHDC does not impose this restriction on buildings in the RZ2 – Suburban Core Zone (RZ2), where both an attic and/or a basement may be permitted in addition to two storeys.²³¹ However, there is no corresponding reference to attics or basements for RZ2 in the DV306 draft SDHDC.
- 11.21 The Committee notes that apart from RZ1, the current SDHDC permits attics and/or basements in all other zones. The Committee agrees that both attics and basements (though not basement car parking) should be allowed where the facade of the building does not present additional storeys, and the additional features do not add to the bulk or scale to the dwelling.

²²⁸ DV306 Draft SDHDC, Element 1.3 Attics and basement car parking – single dwelling blocks – RZ1, R4, p. 3.

²²⁹ Answer to Question on Notice No. 8, dated 16 August 2012.

²³⁰ SDHDC, Part A(1) RZ1 Suburban Zone, Element 2.1 Height, R2, p. 4; DV306 Draft SDHDC, Element 1.3 Attics and basement car parking – single dwelling blocks – RZ1, R3, p. 3.

²³¹ SDHDC, Part A(2) RZ2 Suburban Core Zone, Element 2.1 Height, R5, p. 7.

ACT Planning Strategy

- 11.22 The *Planning and Development Act 2007* (the Act) requires the Executive to ‘make a planning strategy for the ACT that sets out long term planning policy and goals to promote the orderly and sustainable development of the ACT, consistent with the social, environmental and economic aspirations of the people of the ACT.’²³²
- 11.23 Section 108 of the Act relates to the relationship between the Planning Strategy and the Territory Plan and states:
- (1) The planning strategy may be used to develop the statement of strategic directions in the territory plan.
 - (2) The planning strategy is not part of, and does not affect, the territory plan.
- 11.24 Several submissions and witnesses maintained that the current consultation process on the ACT Planning Strategy should have been completed before the release of Draft Variation to the Territory Plan No. 306.²³³
- 11.25 In response, the Minister stated that:
- The draft ACT planning strategy and the transport policy are essentially high level land use and infrastructure plans, in contrast to DV306 which is largely concerned with the fine tuning and delivery of detailed residential planning policies. Whilst there are some areas of overlap, notably in improvements to solar access and therefore sustainability, the city-wide plans are subject to different processes and are generally on a separate program to DV306 and other draft variations that may arise from the continuing policy review of the Territory Plan. To delay DV306 until the adoption of the ACT Planning Strategy was not considered an acceptable option given the imperative of delivering improved solar

²³² Section 105.

²³³ See for example, Submission No. 12, p. 3; Submission No. 13, p. 2.

access and refined controls for multi unit redevelopment for the RZ2 zone.²³⁴

- 11.26 The Committee notes that the recently released ACT Planning Strategy (the Strategy)²³⁵ sets the context for future changes in Canberra and foreshadows further Territory Plan variations to achieve its aims. The Committee believes that it would have been useful for the community to have seen this strategy before committing to DV306 so as to understand its context. The overall intent and vision of DV306 should have been more clearly articulated.
- 11.27 Nonetheless, many of the Strategy's aims are not new, and the Committee considers it disappointing that DV306 has not addressed them. In particular, the Committee (and some submitters, including the Australian Institute of Architects and Purdon Associates and Cox Architecture) notes the Strategy's commitment to 50/50 infill development. As noted in Chapter 5, the Committee does not believe that DV306 facilitates the stated objective.
- 11.28 The Committee notes that housing affordability is another area which all parties in the ACT Legislative Assembly support, but it is not clear how, if at all, DV306 addresses this issue.
- 11.29 The Committee is also concerned that DV306 does not address climate change. In October 2010, the ACT Legislative Assembly passed the *Climate Change and Greenhouse Gas Reduction Act 2010* which requires emissions to be reduced by 40 per cent by 2020 and 80 per cent by 2050, based on 1990 levels. This important legislation does not seem to be reflected in this variation. The Committee questions how these targets can be met without significant changes in our planning system to ensure that future development is consistent with the 40 per cent target.

²³⁴ Answer to Question on Notice No. 1b, dated 16 August 2012.

²³⁵ The ACT Planning Strategy was adopted by the ACT Government on 26 June 2012 and publicly released on 30 August 2012.

RECOMMENDATION 15

- 11.30 **The Committee recommends that the Environment and Sustainable Development Directorate issues an explanation of how DV 306 supports 50/50 infill and greenfield development, housing affordability and the ACT's greenhouse gas reduction target.**

Statements of Intent

- 11.31 The issue of the removal of statements of intent from the codes included in the Territory Plan was first raised by the Planning Institute of Australia (PIA) with the Committee during its inquiry into Draft Variation to the Territory Plan No. 302 Community Facility Zone.²³⁶
- 11.32 At that time, the PIA contended that while the 'intention' of a criterion may be understood when linked to a rule, in cases where there is no associated rule, it would be difficult to determine what the basis of the criterion is without the associated policy intent.²³⁷
- 11.33 The continued removal of statements of intent through this draft variation was again raised by the PIA during this inquiry. The PIA stated:

It is also a problem with the system and the way in which it is being reinterpreted from the initial act. The removal of intent from the codes means that the rules and criteria operate individually of themselves for no purpose. That is a fundamental failure in any planning system. That the objectives are seen as guidance, as they should be, is a valid point, and it is recognised most recently in the Supreme Court case over Giralang shops. But in that decision it was also recognised that the rules and criteria operate independently. So an awful lot of weight in the ACT planning system rests on the rules and how they are drafted. If they are

²³⁶ See Standing Committee on Planning, Public Works and Territory and Municipal Services, *Report No. 11 – Draft Variation to the Territory Plan No 302: Community Facility Zone*, July 2011.

²³⁷ *Transcript of Evidence*, 1 June 2011, p. 8.

not drafted properly, you simply have a dysfunctional planning system.²³⁸

- 11.34 In response, officials from the Environment and Sustainable Development Directorate (the Directorate) advised:

The thing that has changed is that some of the codes have an additional layer of intent statements. I think the criticism has been that there was no clear role for those under the statutory arrangements under which we work, therefore, there was some uncertainty around what status they had.

What we have tried to do in this document is, where those intent statements had relevance to the criteria, we have drawn them into the criteria. In that way, they have a clear statutory role.²³⁹

- 11.35 In response to the suggested introduction of a future generalised intent statement, officials from the Directorate stated:

The majority of rules have performance criteria, or criteria associated with them, which are essentially statements of performance....

We have tried to provide for flexibility where we think it is appropriate, but there are certain instances where we think it is just better for the operation of the system to be quite clear about what the requirements are.²⁴⁰

- 11.36 The Committee notes that in a 2010 ACT Civil and Administrative Tribunal (ACAT) decision, it was concluded that:

Rules and criteria are described as quantitative and qualitative controls respectively. Proposals in the merit track have the option of complying with the rules or criteria unless the rule is mandatory. A proposed development which satisfies a criterion is taken to satisfy the intent of the element. The Tribunal considers therefore that an 'intent' is not itself a control, nor is it to be applied in addition to the rules and criteria. An

²³⁸ *Transcript of Evidence*, 13 July 2012, p. 165.

²³⁹ *Transcript of Evidence*, 25 July 2012, pp. 337–338.

²⁴⁰ *Transcript of Evidence*, 25 July 2012, p. 338.

‘intent’ is rather a statement, which in describing the purpose of the controls, assists in understanding the controls to be applied, namely, the rules and criteria.²⁴¹

Rules versus criteria

11.37 In addition to development tables for each residential zone, assessment codes provide additional planning, design and environmental controls applicable to the assessable uses in the development tables, which are used by the planning authority in assessing development applications. The controls are expressed as either rules or criteria, which are generally quantitative and qualitative, respectively.

11.38 An applicant has the option of complying with either the rules or the criteria, unless the rule is mandatory. Where it is proposed to meet the criteria, the applicant must demonstrate to the planning authority that the proposed development satisfies the criteria and therefore the intent of the control element.

11.39 The Master Builders Association of the ACT (MBA) submitted that the inclusion of criteria with the rules allowed for greater flexibility in responding to site-specific issues:

...from our perspective the more criteria there are with the rules the more scope there is for us to respond to a specific site issue. That is a risk the proponent then takes when they lodge a DA; it is subject to ACTPLA assessment and perhaps ultimately an ACAT review. But the criteria at least give you an opportunity, whereas we have often found that there might be an innovative rule with the criteria but a corresponding rule that undoes that. That was a source of concern.²⁴²

11.40 While the certainty provided through the codification of planning rules was supported, the Housing Industry Association argued that it should not come at the expense of innovation:

²⁴¹ Forman and York v ACT Planning and Land Authority & Others (Administrative Review) [2010] ACAT 54.

²⁴² *Transcript of Evidence*, 6 July 2012, p. 94.

... the pursuit of certainty through codification should not be seen as an invitation to introduce an additional layer of requirements that are not policy neutral and that come at the expense of housing affordability and innovation.²⁴³

11.41 Overly prescriptive rules would stop innovation, according to the MBA:

... the challenge has always been that if you prescribe, somebody will work to the pure prescription to get the approval across the line. You will just stifle innovation and you will stifle these guys' creative talents, because they will simply design something to get it approved. That is not really what the real objective should be.²⁴⁴

11.42 The Australian Institute of Architects (AIA) was also concerned about the increase in mandatory rules and the consequential effect on innovation:

There have been a lot of mandatory rules with no criteria introduced into the document, which is unfortunate. As architects we like to think we can come up with some good solutions, and sometimes you might have a solution. You go and talk to the planners at the front counter and they say: "It seems like a sensible idea but you can't do that. It's a mandatory rule." Often there is no opportunity to explore innovative options. With respect to some of the rules, with simple things like some heights or plot ratios, some of those things clearly do not necessarily give you a better outcome.²⁴⁵

11.43 The AIA further argued that there should be criteria associated with each rule:

We would like to see criteria against every mandatory rule so that there is an opportunity to look at innovative options and concentrate on outcomes rather than a tick-box solution.²⁴⁶

11.44 Conversely, the Woden Valley Community Council (WVCC) argued that 'strong rules' were important to enable the creative and innovative thinking required for the future of the city.²⁴⁷

²⁴³ *Transcript of Evidence*, 18 July 2012, p. 223.

²⁴⁴ *Transcript of Evidence*, 6 July 2012, p. 97.

²⁴⁵ *Transcript of Evidence*, 18 July 2012, p. 259.

²⁴⁶ *Transcript of Evidence*, 18 July 2012, p. 270.

- 11.45 The need to comply with the rules to meet the requirements for the simpler code track assessment route, also have ramifications for building design, according to the AIA:

In ... working within the parameters that we are given—the legislation—we often have to dumb down our designs and dumb down our proposals to make them approvable under mandatory rules.

It is just so difficult when you can see the potentials. I appreciate why the rules need to be there and why we need to be a regulated industry, but the rules can work for us and against us. We do not want to see them completely scrapped, but it would be nice to be able to have recognition on merits of individual proposals. On complex sites the unintended consequences are entrenched into reality because of a system that does not have the flexibility to permit good solutions and good outcomes.²⁴⁸

- 11.46 While there were claims that the inclusion of criteria allows for added flexibility and innovation, the WVCC observed that this did not necessarily mean that building design would be enhanced:

The community continually finds that the deck is stacked in favour of developers, particularly, as is often the case, when citizens have to resort to the appeals process via ACAT. The operations of the merit track, for which we all held such high hopes when it was introduced, have actually been pretty disappointing, because, instead of giving the flexibility for high quality, what has tended to happen is that the merit track gives flexibility for developments which do not fully comply with the rules, and very often those developments are very disappointing in terms of their quality.²⁴⁹

- 11.47 The discretion afforded to the planning authority by the inclusion of non-mandatory rules was also criticised by Mr Norm Gingell:

... you have got all of these side criteria that give ACTPLA complete discretion as to how they go about deciding on individual DAs. You have

²⁴⁷ *Transcript of Evidence*, 11 July 2012, p. 159.

²⁴⁸ *Transcript of Evidence*, 18 July 2012, pp. 271–272.

²⁴⁹ *Transcript of Evidence*, 11 July 2012, p. 158.

this interplay where all those interpretive criteria are interpreted against the zone objective, and they have changed the goalposts without being up-front about it. They have changed the goalposts of how they are describing zone objectives, particularly across RZ2 and RZ3, and you get this interplay between it where the actual rule is almost completely abrogated.²⁵⁰

- 11.48 The Griffith / Narrabundah Community Association also argued that mandatory rules provide greater certainty in the development application process:

With any application you should be able to pick any one at random in ACTPLA and say, "Process this." They should all go through a unique route, well defined, and come out there, there or there. But you should be able to predict it. In fact anyone who is prepared to read through all the rules should be able to replicate this process. If you cannot, what happens is that neither residents nor developers have any surety as to what is allowed and what is not allowed. It wastes a lot of time and makes trouble.²⁵¹

- 11.49 The Minister observed that the disparate views on the application of rules and criteria was a long-standing one, but that a balanced approach was required:

... we operate in a system where planning decisions are subject to some level of disputation and review by independent judicial tribunals and potentially even the courts. It is necessary for there to be some clear rules around which assessment occurs, and we seek to provide a planning document that has both qualitative and quantitative criteria that are used in assessing a development proposal.

This is an age-old debate, and it would be the case that the professions argue for more qualitative than quantitative measures. Alternatively, industry waxes and wanes between clear, definitive rules and flexibility.

²⁵⁰ *Transcript of Evidence*, 18 July 2012, p. 276.

²⁵¹ *Transcript of Evidence*, 11 July 2012, p. 119.

So this is an age-old question. I think the draft variation seeks to strike a reasonable balance on these questions.²⁵²

Plot ratios

11.50 The extent to which DV306 encourages the construction of larger homes, colloquially known as ‘McMansions’, particularly in RZ1, was of interest to the Committee.

11.51 The Griffith / Narrabundah Community Association (GNCA) raised concerns about the existing plot ratio requirements, which, it maintained, lead to over-development of residential blocks, and called for a sliding scale to apply for RZ1.²⁵³

11.52 The GNCA stated:

So what we are saying is that we would like ACTPLA to review the plot ratios and how they are calculated, in consultation with developers and community groups, so that all residential development, particularly in RZ1, which is mainly Griffith, is consistent with the strategic directions and the objectives of the plan. And right now that is not working.²⁵⁴

11.53 Ms Margaret Fanning reiterated the point:

There has been a fair bit of discussion about this already this morning, and I would note that, although 50 per cent is the normal plot ratio requirement, DV 306 does introduce 65 per cent in certain cases in both RZ1 and RZ2 for multi-unit housing. So, if we have a problem with 50 per cent, 65 per cent, who knows what we will get then.

The problem seems to be that either the current definition of “plot ratio” is deficient or that we need to think about reducing the plot ratio, particularly for larger blocks. I would support the comments that have been made about a sliding scale. As far as definitions are concerned, I would suggest that account needs to be taken of detached garages and

²⁵² *Transcript of Evidence*, 25 July 2012, p. 337.

²⁵³ Submission No. 4, p. 8.

²⁵⁴ *Transcript of Evidence*, 11 July 2012, p. 117.

other buildings that are on the block and also driveways and hard-paved areas.²⁵⁵

- 11.54 The Australian Institute of Architects (AIA) also submitted that DV306 would encourage “McMansions”:

We feel there are some unintended consequences that flow from DV 306. We have a loss of density. The RZ2 code might not be perfect. We might not really want to operate that way, but we have certainly lost a gap in the scale of the city. From high density areas at centres of population, out to the suburbs, there is a little dip where we should be concentrating. We seem to have lost the opportunity to do that. We feel that DV 306 has not helped that. In fact, to the contrary; it seems to have made it much worse. It has encouraged people who have bought properties there to build McMansions. They are not allowed to have more dense populations. That is probably something you have heard before—the McMansions issue.²⁵⁶

- 11.55 The AIA added:

That was why there is conjecture that one of the unintended consequences of this demise of RZ2 will be someone that has purchased land for development, for making a profit. About their only avenue out will be long-term rental at minimal maintenance costs. So I think there is a down siting of the neighbourhood, poorly maintained rental properties. Alternatively, they do what they are only entitled to do, and that is build a single house at 50 per cent of the plot ratio, which produces the McMansions. That is certainly a long way off supporting the densification around local centres and all the benefits that flow on from there in terms of supporting more public transport, walking, cycling, support of the local shopping businesses. McMansions, we do not believe, are going to achieve that objective at all.²⁵⁷

²⁵⁵ *Transcript of Evidence*, 11 July 2012, p. 129.

²⁵⁶ *Transcript of Evidence*, 18 July 2012, p. 260.

²⁵⁷ *Transcript of Evidence*, 18 July 2012, p. 262.

- 11.56 In response to the observation that the respective plot ratios for single and dual occupancy housing in RZ1 would appear to promote larger single residences, officials from the Directorate responded:

The plot ratio provisions relating to dual occupancy were introduced through variation 200. They were attempting to address concerns around that particular type of development. The plot ratio control that was introduced in relation to single dwellings was in response to concerns that there was not any limit on the size of them.

It is true that with plot ratio we need to provide a reasonable amount of flexibility for a landowner to build a house that meets their requirements. So plot ratio is really a restriction on the size of the house you can build. It is a question of what is reasonable. I guess the issue is that we are trying to deal with a range of different block sizes. Some people have suggested that a sliding scale plot ratio might be more appropriate, and I think there are arguments that you could make to support that. But it introduces another layer of complexity, and it is balancing that. We have found that for blocks above 500 square metres that that figure works reasonably well, but, yes, there are cases where it does not work particularly effectively.²⁵⁸

- 11.57 Notwithstanding that a lot of housing stock in the older RZ1 suburbs are of poor-quality build and with poor energy efficiency, the Minister observed that not all owners would choose to make the investment to upgrade the existing dwelling, but would demolish and rebuild instead. Additionally, people's expectations about what they will receive in return for their investment have changed with a resulting inevitable increase in dwelling size.
- 11.58 While not advocating the construction of 'McMansions', the Minister advised that DV306 provides a statutory framework to ensure that where larger homes are built on existing blocks, better outcomes with respect to private open space and solar access need to be achieved in order to improve the liveability and energy efficiency of those dwellings. However he added that:

²⁵⁸ *Transcript of Evidence*, 25 July 2012, p. 331.

... it is very difficult to dictate particular design outcomes or good design through the planning system alone, because of people's individual preferences—unless we want to become extremely prescriptive about what can and cannot be built. My view is that as a community people would still like some flexibility and choice about what they build.²⁵⁹

- 11.59 The Committee had considerable sympathy for the views expressed by the AIA²⁶⁰ and some individuals and community groups²⁶¹ that the 50 per cent plot ratio in older suburbs with larger blocks was facilitating very large, less sustainable dwellings. The Committee notes, for example, that you can have a higher plot ratio for a single residence than a dual occupancy development.

RECOMMENDATION 16

- 11.60 **The Committee recommends that the Environment and Sustainable Development Directorate introduces a sliding scale for plot ratios for large blocks (greater than 500m²).**
- 11.61 The Committee's visit to Wright also highlighted plot ratio issues at the other end of the scale. Some buildings on less than 400m² can be bigger than those on larger plots. The Committee is also concerned at how the streetscape of small single dwelling blocks is evolving.

RECOMMENDATION 17

- 11.62 **The Committee recommends that the Environment and Sustainable Development Directorate considers increasing the minimum block size where integrated development is not required.**

RECOMMENDATION 18

- 11.63 **The Committee recommends that the Environment and Sustainable Development Directorate reviews the interaction of plot ratio and plot size to eliminate anomalies.**

²⁵⁹ *Transcript of Evidence*, 4 July 2012, pp. 53–55.

²⁶⁰ *Transcript of Evidence*, 18 July 2012, p. 262.

²⁶¹ See for example *Transcript of Evidence*, 11 July 2012, p. 117; *Transcript of Evidence*, 18 July 2012, p. 286.

Estate development

- 11.64 The proposed new Estate Development Code (EDC) would replace the existing Residential Subdivision Development Code (RSDC). The RSDC differs from the current code in format and also in some key policy areas, in particular the inclusion of block compliance tables aimed at improving solar performance for residential subdivisions.²⁶²
- 11.65 One issue raised with the Committee about estate development was the need to provide for neighbourhood parks. The North Canberra Community Council (NCCC) highlighted the case of North Watson which, despite expecting to have some 2,000 dwellings, does not have a designated neighbourhood park.²⁶³
- 11.66 The NCCC was supportive of the new EDC, stating that it would be a ‘vast improvement’ as long as the provisions were enforced:
- It should be the case that when somebody comes in to say, “I want to build a development here,” or the government decides it wants to build on there, there is a list that you check off. One of the questions on that list would be, “Is there a neighbourhood park close enough to that?” If there is, you tick it off. If there is not, you say, “We’ll have to build a neighbourhood park.” It is a matter of the process, having a process to ensure that things are complied with.²⁶⁴
- 11.67 The importance of balancing higher densities with public space was also stressed by the Gungahlin Community Council:
- What I think is important, particularly as the ACT government continues to look for greater density in housing, is that it trades that off against putting back more open space for people to get out and enjoy. The walking tracks in and around the lake system in Gungahlin are extremely well used and personally highly valued. It is some evidence to me that people are trading off their own personal block for access to walking

²⁶² ACT Planning and Land Authority, *Draft Variation to the Territory Plan 306, May 2011* (public consultation version), p. 23.

²⁶³ *Transcript of Evidence*, 11 July 2012, pp. 144–145.

²⁶⁴ *Transcript of Evidence*, 11 July 2012, p. 145.

around the lake, good cycling infrastructure and all of those pieces. I think as long as good green spaces are provided for community use—good parks with multi-use supports, so you can ride, walk, skateboard, if that is important to you—all of those things make for a community that is much happier. If we went down a path where there was no greenery at all, I think that would be a dreadful tragedy.²⁶⁵

- 11.68 Another issue raised by the Property Council of Australia was that fully compliant estate development plans and subdivision design should follow the same process as code-compliant housing.²⁶⁶
- 11.69 The Committee also received a presentation from the Heart Foundation of the ACT (Heart Foundation) which outlined the benefits of well designed estates on people's health, particularly through the use of 'active living design principles'.²⁶⁷
- 11.70 The Heart Foundation submitted that leadership from government would help in ensuring safe, sustainable and well-designed estates:

In the beginning if you try to change something it always comes at a price. However, providing that leadership, educating the community and businesses and making transparency around this information after it has been put in place, it is easier to retrofit. Australia has been extremely good with the housing there. We found it was an extremely good cost-effective model to put in. Then we can roll it out and then it becomes cheaper. ...

It is the same with a good prototype: the first one never meets cost effectiveness. But it is extremely to show leadership in where the market can go or where the city development can go, and that can have a beneficial effect for the whole city in the long run or the whole country.²⁶⁸

²⁶⁵ *Transcript of Evidence*, 11 July 2012, pp. 155–156.

²⁶⁶ *Transcript of Evidence*, 13 July 2012, pp. 201–202.

²⁶⁷ *Transcript of Evidence*, 6 July 2012, p. 68.

²⁶⁸ *Transcript of Evidence*, 6 July 2012, p. 81.

- 11.71 The Committee considers that the issues raised by the Heart Foundation are worth further consideration by the planning and land authority with respect to future estate development.

Entity endorsement

- 11.72 All provisions relating to entity endorsement are contained in Part D of the EDC, which lists each component of an estate development plan that requires entity endorsement as a mandatory rule.
- 11.73 In addition to covering infrastructure in the public realm, the provisions of Part D – Endorsement by government agencies (entities) of the EDC would also apply to the infrastructure within common property under a proposed community title scheme established under the *Community Titles Act 2001*.²⁶⁹
- 11.74 In its submission, 5AAP expressed dissatisfaction with this requirement, which it considered less flexible than the previous approach.²⁷⁰

RECOMMENDATION 19

- 11.75 **The Committee recommends that the previous flexibility applying to the design of facilities and spaces covered by community title schemes be retained.**

Green infrastructure

- 11.76 The Committee also heard concerns from the Australian Institute of Landscape Architects (AILA) of what it claimed were deficiencies in DV306 with respect to green infrastructure.²⁷¹
- 11.77 Referring to the landscape policy in place in neighbouring Queanbeyan, AILA stated:

... DV 306 is seriously deficient or silent on multi-unit development codes with regard to areas of planting zones and private open space and the

²⁶⁹ DV306 Appendix E – *Draft Estate Development Code*, p. 24.

²⁷⁰ Submission 21, p. 2.

²⁷¹ *Transcript of Evidence*, 13 July 2012, pp. 216–222. See also Submission 3a, p. 3.

quality of landscape that goes in to multi-unit developments. As far as landscape is concerned, Queanbeyan have very simple rules and regs that say, "Thou shalt ..." ²⁷²

11.78 AILA submitted:

One of the things that we need to take into account as part of the planning rules is to ensure that there is an expectation that urban development contributes to the landscape character of Canberra in a positive manner, and that means planting trees and planting landscape. How much they actually choose to do is perfectly up to the individual landholder, but at a point in time where we have a development proposal and a planning authority interest and a public interest being applied to it there should be a minimum standard applied.

I believe that the minimum standard that they are applying at the moment through DV 306 is insufficient. Whilst providing an opportunity for a planting area without actually providing a requirement to plant anything is less than what I think we should be expecting as a community. ²⁷³

11.79 Another issue of concern to the Committee is the limitation of the plot ratio and setback controls in not requiring any biologically active space or green space within blocks. The Committee considers that this could lead to a 'concrete jungle' with concrete, pavers and asphalt dominating whatever land is not built on. ²⁷⁴ The Committee would like to ensure that developments make sufficient provision for green space.

RECOMMENDATION 20

11.80 **The Committee recommends that a minimum quantity of biologically active, permeable or green space be required on all blocks.**

11.81 The Committee also noted that green space, and in particular street trees, has been traditionally part of the nature strip or verge. The Committee heard

²⁷² *Transcript of Evidence*, 13 July 2012, p. 219.

²⁷³ *Transcript of Evidence*, 13 July 2012, pp. 216–217.

²⁷⁴ See for example *Transcript of Evidence*, 13 July 2012, pp. 188–190

evidence that various Territory and Municipal Services Directorate requirements were interacting with smaller block sizes – in particular widths – to make it difficult to plant trees, especially those which will grow to a significant size.²⁷⁵

RECOMMENDATION 21

11.82 **The Committee recommends that the ACT Government reviews nature strip requirements to ensure adequate provision of street trees.**

11.83 While not discussed in this report, the following issues were also raised during the Committee's inquiry:

- access easements to the rear of blocks
- costs associated with appealing planning decisions
- delineation of responsibilities between the Territory and Municipal Services Directorate and the Environment and Sustainable Development Directorate
- inclusion of balconies in GFA
- integrated housing development provisions
- new flexible building heights in RZ3–RZ5
- protection of heritage precincts in established suburbs
- provisions for removal of concessional lease status
- requirements for footpaths
- residential care accommodation
- water tank requirements

Mary Porter AM MLA

Chair

19 September 2012

²⁷⁵ See for example, *Transcript of Evidence*, 13 July 2012, pp. 211–213.

APPENDIX A: Submissions

No	Name	Type
1	Mr John Holland	Private capacity
2	Property Council of Australia	Organisation
3	Australian Institute of Landscape Architects (ACT Chapter)	Organisation
4	Griffith / Narrabundah Community Association Inc	Organisation
5	Dr Sanie Ymer and Mr William Tucker	Private capacity
6	Mr Norm Gingell	Private capacity
7	Purdon Associates & Cox Architecture	Organisation
8	Planning Institute of Australia (ACT Chapter)	Organisation
9	Master Builders Association of the ACT	Organisation
10	Housing Industry Association	Organisation
11	Weston Creek Community Council	Organisation
12	Australian Institute of Architects (ACT Chapter)	Organisation
13	Inner South Canberra Community Council	Organisation
14	Yarralumla Residents Association	Organisation
15	Ms Margaret Fanning	Private capacity
16	Heart Foundation (ACT)	Organisation
17	Ms Stephanie Henry	Private capacity
18	Ms Jane Goffman	Private capacity
19	Mr Patrick and Mrs Bernadette Earle	Private capacity
20	Ms Felicity Smart and Jonas Lloyd	Private capacity
21	5AAP	Organisation

APPENDIX B: Public hearings and witnesses

4 July 2012

Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development

Environment and Sustainable Development Directorate

- Mr Ben Ponton, Deputy Director-General, Planning Policy
- Mr Garrick Calnan, Senior Manager, Territory Plan Review and Implementation Section
- Mr Bruce Frazer, Manager, Territory Plan Review and Technical Amendment Unit

6 July 2012

Heart Foundation – ACT

- Mr Greg Mews, Active Living Coordinator,

Master Builders Association of the ACT

- Mr Jerry Howard, Deputy Executive Director
- Mr Glen Dowse, Director, DNA Architects
- Mr Alastair MacCallum, Director, AMC Design & Management

11 July 2012

Inner South Canberra Community Council

- Mr Gary Kent, Chair
- Mrs Anne Forrest, Deputy Chair
- Ms Marea Fatseas, Committee Member

Griffith / Narrabundah Community Association

- Dr David Denham AM, President
- Mr John Edquist, Vice-President

- Mrs Anne Forrest, Committee Member

Weston Creek Community Council

- Mr Tom Anderson, Chair
- Ms Pat McGinn, Deputy Chair

North Canberra Community Council

- Mr Leon Arundell, Chair
- Mr Richard Lawson, Secretary

Gungahlin Community Council

- Mr Peter Elford, Vice President

Woden Valley Community Council

- Dr Jenny Stewart, Chair

13 July 2012

Planning Institute of Australia (ACT Division)

- Mr Viv Straw, President
- Mr Hamish Sinclair, Director

Property Council of Australia

- Mr Robert Winnel, Member, ACT Division Council
- Mr John Kenworthy, Member, ACT Residential Committee
- Ms Alison Pratt, Member, ACT Planning Committee

Australian Institute of Landscape Architects (ACT Chapter)

- Mr Michael Reeves, President

18 July 2012

Housing Industry Association

- Mr David Fogg, President, ACT-Southern New South Wales Region,
Director, Prostyle Building Group

- Mr Stephen Smith, Planning and Building Service Adviser, ACT-Southern New South Wales Region
- Ms Kristin Brookfield, Senior Executive Director, Planning, Development and Environment, Housing Industry Association; Chair, Development Assessment Forum

Australian Institute of Architects (ACT Chapter)

- Mr Tony Trobe, President
- Mr Alan Morschel, Member
- Mrs Natalie Coyles, Member
- Mr Brendan Baxter, Architect and Urban Designer, Philip Leeson Architects

Mr Norm Gingell, private capacity

Mr John Holland, private capacity

20 July 2012

Mr Rodney Moss, Director, Cox Architecture (Canberra)

Ms Chris Purdon, Director, Purdon Associates

25 July 2012

Dr Sanie Ymer, private capacity

Mr William Tucker, private capacity

Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development

Environment and Sustainable Development Directorate

- Mr Ben Ponton, Deputy Director-General, Planning Policy
- Mr Garrick Calnan, Senior Manager, Territory Plan Review and Implementation Section
- Mr Bruce Frazer, Manager, Territory Plan Review and Technical Amendment Unit

APPENDIX C: Exhibits

Document	Organisation / Individual
Good for Business. The benefits of making streets more walking and cycling friendly. Discussion paper, November 2011.	Heart Foundation of the ACT
'New Farm and Teneriffe Hill Local Plan Code: Performance Criteria and Acceptable Solutions' printed out 2 July 2012	Inner South Canberra Community Council
Figure 1, 32 Stuart Street, Griffith RZ1, 4 July 2012 (photograph)	Griffith / Narrabundah Community Association
Figure 2, 32 Stuart Street, Griffith RZ1, 4 July 2012 (photograph)	Griffith / Narrabundah Community Association
Figure 3, 47 Barrallier Street Griffith, 29 June 2012 (photograph)	Griffith / Narrabundah Community Association
'ACTPLA DA notification requirements'	Griffith / Narrabundah Community Association
Copy of letter to resident regarding DA 201119717, 12/6 Griffith, dated 24 March 2011	Griffith / Narrabundah Community Association
Document headed 'Ainslie - Development Application: 201120066'	Griffith / Narrabundah Community Association
2 photographs of demolished house, undated	Griffith / Narrabundah Community Association
Copy of submission to ACTPLA DV303 consultation process	Griffith / Narrabundah Community Association
Document headed 'Diagram 4: Impact of a 50 per cent plot ratio for single dwellings, compared with maximum plot ratio of dual occupancy in Suburban Areas', undated	Griffith / Narrabundah Community Association
Document entitled 'Attachment C – Overview of the Garden City Variation and Variation 173'	Griffith / Narrabundah Community Association
Draft Variation 306 and footpaths', undated	North Canberra Community Council
Document extract on housing affordability, case study analysis table	Australian Institute of Architects
Correspondence from Mr Norm Gingell to Ms Katy Gallagher MLA, [then] Deputy Chief Minister, dated 22 August 2010, regarding regulatory impact assessment processes	Mr Norm Gingell
Correspondence from Ms Katy Gallagher MLA, [then] Treasurer to Mr Norm Gingell, dated 20 September 2010, regarding regulatory impact assessment processes	Mr Norm Gingell
Correspondence from the ACT Government Solicitor to Mr Ben McCourtie, Hill & Rummery, dated 9 September 2010, regarding <i>Walkington and Others v ACTPLA and Weetangera Holdings Pty Ltd – AT 10/37, 38 & 39</i>	Mr Norm Gingell
Environment and Sustainable Development Directorate, <i>Unit titling and dual occupancies</i> , printed from website on 17 July 2012.	Mr Norm Gingell

APPENDIX D: Dissenting Comments – Mr Coe

Draft Variation to the Territory Plan No. 306: Residential development, estate development and leasing codes

Dissenting Comments by Alistair Coe MLA

I recommend that *Draft Variation to the Territory Plan No. 306: Residential development, estate development and leasing codes* not proceed.

The Territory Plan is intended to bring certainty to all stakeholders of Canberra's planning system. Instead, the Government's disingenuous approach to the development and implementation of this Draft Variation has brought about many poor outcomes, whether intended or otherwise.

The process of inquiring into Draft Variation 306 was a worthwhile experience as the Committee heard many perspectives on the planning system, and in particular, the specific variation put forward by the Government.

Whilst there may be elements of DV306 that are palatable and the Committee's report has reported on some of those, on balance, the variation will not be good for Canberra. The passing of this variation would set a bad precedent and endorse poor practices.

Witnesses to the Committee highlighted many situations where perverse outcomes have been experienced, especially as a result of changes to solar access. The Committee also heard that the Government's stated objective of increasing density around local centres and transport corridors is not consistent with the requirements specified in DV306.

Given the extreme complexity and reach of DV306, the variation should not be supported and changes to the various aspects of the planning system should be introduced as stand-alone variations rather than one all-encompassing variation rushed several months before the end of the seventh Assembly.

There is a need to review the workings of the Territory Plan to ascertain whether the planning principles the Government allegedly espouses are represented in the document, and to make the document more understandable.

Missed opportunity

The ACT Chapter of the Australian Institute of Landscape Architects described the opportunity the Government had in making significant changes to the planning system:

The preparation of DV306 represented an opportunity for the Planning Authority and other government agencies to create a transparent and flexible regulatory framework for the delivery of key government policies in housing affordability, sustainability of future city, social equity and economic stability.¹

Rather than making the most of this opportunity, DV306 lacks direction and has serious flaws as raised by many, or most, of the witnesses the Committee heard from.

Mr Hamish Sinclair from the Planning Institute of Australia (ACT Division) said:

...in many respects we did find ourselves in the position of recommending this variation be withdrawn and recommenced from the start, mainly because it does not achieve good planning outcomes. It is drafted in a manner that will not deliver the expected outcomes that are talked about.²

The submission by the Planning Institute of Australia (ACT Division) summarised some of their concerns as follows:

1. The unnecessary duplication of Zone Objectives, rules and criterion in the planning codes and establishment of a clear zone based development hierarchy.
2. Uncertainty surrounding the content and implementation of the underpinning policy and analysis e.g. the links between the solar access provisions and the relevant objective of good access.
3. Ambiguity of language and definition that fail to guide from developers and the community in application to both the statements against criteria and appropriate design response expectations.
4. The use of “reasonable” and implicitly a “reasonableness test”, should be defined within the planning system to avoid unnecessary litigation.³

Consultation

The process of the consultative committee tasked with advising the Government was described by the President of ACT-Southern New South Wales Region, Housing Industry Association, Mr Fogg, as follows:

I was part of the committee that went through the DV 306 talkfests that we had prior to its implementation. Quite honestly, it was a talkfest. It was a decision made, I think, on a political basis where the opportunity was given to community and industry to comment, but

¹ Australian Institute of Landscape Architects, Submission, 5 June 2012

² Transcript, Planning Committee, 13/7/12, p.165

³ Planning Institute of Australia (ACT Division), Submission, 1 June 2012

the decision had been made before we went through that process. We were just paid lip-service. At the end of the day, it was done and dusted and DV 306 was implemented by those who had made decisions prior to us even saying anything.

That is my personal view. It is not necessarily the view of the HIA, but it was certainly the implication of what I felt from the meetings and the attention given to them by the senior public servants. At the end of the day, this was not consultation by committee; this was decisions made from above. As I said before, it was a political decision for the minorities.⁴

Mr Reeves from the Australian Institute of Landscape Architects described the consultation as follows:

Most of the contributors to the consultative groups on 301, 303 and 306 were disappointed with the process and disappointed with the responses that were provided by ACTPLA at that particular point in time. They had representation that ranged across professional consultant groups, community groups and developers...It seemed like you were banging your head up against a brick wall. It seemed like they were not listening to you, and it seemed like there was a preordained outcome that had been considered at the very start with regard to where they wanted to be at a particular point in time. There did not seem to be much give and take. I have no evidence as to whether that was the case or not, but participation in the process was frustrating in that we spent an awful lot of time and intention and honest hard work in putting forward comment on what they were proposing and the response was less than what we would consider satisfactory.⁵

It is extremely disappointing that the Government did not respect nor trust the experts engaged to make contributions to the development of the Variation. This arrogance is symbolic of the approach Government Ministers have taken to many portfolios.

Interim Effect

The issue of interim effect were raised by numerous witnesses, including Mr Jerry Howard from the Master Builders Association of the ACT:

We have, of course, great concerns with the interim effect provisions. I am still at a loss to understand that if a developer purchases a piece of land for redevelopment and that developer purchases that land under the previous rules, all of a sudden—essentially, overnight—the rules change and he is actually governed by the interim effect provisions of a planning system that still has not gone through the Assembly. It has the potential to stay in place for two years without being actually voted on by the Assembly.⁶

The use of interim effect is a powerful tool at the Minister's disposal and should be used very carefully. In such instances, there should be an imperative to bring the change before the scrutiny of the Assembly (including the Committee) as quickly as possible and in a form that can easily be endorsed or rejected. The interim effect provisions of DV306 are buried in amongst hundreds of

⁴ Transcript, Planning Committee, 18/7/12, p.228

⁵ Transcript, Planning Committee, 13/7/12, p.220

⁶ Transcript, Planning Committee, 6/7/12, p.83

pages of other issues which must be considered at the same time. As such, disallowance of the interim effect provisions may take months, or even years, after they took effect.

Complexity and Uncertainty

The uncertainty and lack of consistency in the planning rules creates unfairness for all people, including existing residents. Mr Jerry Howard described the issue as follows:

The existing owners' rights are certainly something that I am unclear about...For example, if you were doing an extension to an existing building and if your block of land is 500 square metres or greater, then my understanding is, having read through the guidance notes, that in adding that extension you would have to comply with the rules proposed in DV 306 with building block criteria, solar access and fence requirements.

That is grossly unfair, because that person bought that land under a leasehold system where you had very simple rules. You had no block orientation provisions. You had setback requirements that were 1.8 and 2.7, or six feet and nine feet as they were. It was very simple to understand. It was a very uncomplicated system. You could build your building from one boundary to the other boundary. The whole idea of the 2.7 was that it allowed you to drive a car down the side. How simple were those rules?

Now if they want to extend that building, given the constraints they are going to have with where they can extend that building—and remember that we are also about retaining existing stock and upgrading existing stock—they will find that they will no longer be able to have that extension, that 1.5 metre setback...So their rights to their land that they bought have been totally compromised.⁷

Numerous witnesses called for a review of the Territory Plan and/or DV306 to ensure that the document is working according to the intentions of the Government and community. Ms Margaret Fanning of the Griffith/Narrabundah Community Association and Inner South Canberra Community Council said:

...I believe the rest should be put to one side until a proper review of the plan has been undertaken.⁸

Mr Jerry Howard said:

Again, I guess that is what we are saying. We need to seriously review this document.⁹

Mr Trobe from the Institute of Architects said:

I understand that DV 306 was not supposed to be policy neutral, but if it is not it seems to be policy on the run. It is not policy born out of a clear and intellectual review of where we are at, where the country is at and where the planet is at. We feel that

⁷ Transcript, Planning Committee, 6/7/12, p.84

⁸ Transcript, Planning Committee, 11/7/12, p.128

⁹ Transcript, Planning Committee, 6/7/12, p.83

somehow or other it is just a little adjustment, a tweaking of the system, where we need a bigger review.¹⁰

Dr Jenny Stewart from the Woden Valley Community Council said:

We believe there is an urgent need for an independent review of the planning system and the operations not only of ACTPLA but also of, let us not forget, the publicly owned developer, the Land Development Agency. There is also a really pressing need for the commencement of reasoned and reasonable dialogue between developers, the community and government about what is actually meant by “quality” and how it can be achieved. A revitalised Planning and Development Forum might be one way of doing this. At the moment the Planning and Development Forum lacks its developer participants, who have withdrawn from it.¹¹

Mr Smith from the Housing Industry Association said

For a start, as you can see, it is an incredibly complex document that goes from here to there to everywhere. Even our most experienced architects and designers are having problems deciphering it. The people administering it are having problems deciphering it.¹²

Solar Access

The Committee was advised about the complexity and perverse outcomes imposed by changes to solar access requirements. Whilst the intention of ensuring that residents have access to sunlight sounds reasonable, the stipulated requirements are bringing about bad planning outcomes.

In a tour of houses in Molonglo, the Master Builders Association pointed out numerous examples of houses that were situated to the northern sides of blocks which serves to minimise their exposure to sunlight - the exact opposite of the stated intention of the policy.

Mr Dowse from DNA Architects said:

So what we are doing is compromising northern space, and we think that is a particularly bad result of 306. We should be encouraging more northern yard, even if it is shaded in the middle of winter. Try and keep the sun off the house. The northern yard is not used as heavily in winter, but in summer it is. In summer the sun is at a much higher angle, so not in the shade. A southern yard is useless. We do not want to put our clothes out there because they will not dry. We can park a car in there sometimes. We can put a water heater in there.¹³

Mr Smith from the Housing Industry Association said:

It [solar access] may also generate unintended consequences. For example, the solar setback in most cases requires larger blocks to have the south side set back three metres. This

¹⁰ Transcript, Planning Committee, 18/7/12, p.259

¹¹ Transcript, Planning Committee, 11/7/12, p.152

¹² Transcript, Planning Committee, 18/7/12, p.237

¹³ Transcript, Planning Committee, 6/7/12, p.88

creates more living area to the south rather than to the north, which is not an accepted passive solar design outcome. There may also be a major impact on proposed infill block developments where solar access cannot be achieved due to existing surrounding developments, rendering them unviable and, hence, undevelopable.¹⁴

The solar access rules need to be reviewed and should not be endorsed in their current form.

RZ2

The new policy regarding RZ2 was criticised in many submissions for a variety of reasons. It is not clear what the Government's intention of RZ2 is.

PIA is concerned that the cumulative effect of the range of RZ2 controls have not been sufficiently tested to consider the implications in relation to the achievement of urban infill targets and affordable housing.

In addition, the controls, coupled with other development factors (including the Lease Variation Charge) will potentially have a significant effect on housing affordability or lead to the prospect that low density redevelopment within RZ2 zones is not economically feasible resulting in limited, or no, redevelopment occurring in these areas.¹⁵

In the Cox-Purdon submission, the issues with RZ2 were summarised as follows:

- the code provisions for the RZ2 Zone will not achieve the Zone objectives as stated in the recommended DV306, and
- the code provisions do not enable economically viable development or development that provides housing choice in the RZ2 Zone.¹⁶

¹⁴ Transcript, Planning Committee, 18/7/12, p.223

¹⁵ Planning Institute of Australia (ACT Division), Submission, 1 June 2012

¹⁶ Planning Institute of Australia (ACT Division), Submission, 30 May 2012