

ACT Division
Planning Institute of Australia
11 National Circuit
Barton ACT 2600

30 May 2011

Veronica Strkalj
Secretary
Standing Committee on Planning, Public Works and Territory and Municipal Services
ACT Legislative Assembly Secretariat

Dear Veronica

**Subject: Inquiry into Draft Variation to the Territory Plan No. 302
– Community Facility Zone**

The Planning Institute of Australia (PIA) is the national association representing professional town planners throughout Australia. The Institute has a total membership of about 4,500 people. ACT Division of the Planning Institute of Australia (PIA ACT) committee members are volunteers helping to advance the planning profession in the ACT.

PIA ACT appreciates the opportunity to make a further submission to the Committee on the review of the Community Facilities Zone and Development Code. PIA ACT have been actively involved in consideration of Draft Variation No 302 to the Territory Plan over the last 12-18 months. PIA members attended a workshop facilitated by ACTPLA and made a comprehensive submission to ACTPLA in June 2010.

We have further reviewed the Final Variation submitted to the Committee by ACTPLA. In general, we support the way in which ACTPLA have incorporated key comments from the Institute into the revised final variation. However, there are still some important aspects of our submission to ACTPLA that have not been incorporated into the final variation and we make this further submission to seek the Committee's consideration of further changes to the structure of the Zone Development Table and the Community Facilities Development Code.

The Community Facilities Zone review is the first "policy" review since the 2008 (policy neutral) Territory Plan. This presents an opportunity for this review to consider ways to improve the ACT's implementation of the DAF Model and establish a 'template' for subsequent reviews (e.g. Residential Zones, Commercial Zones).

We acknowledge that the 'planning system' has been subject to a significant level of criticism in recent times. Many community members desire a greater level of certainty from the planning system. This certainty should start at the strategic planning level, and continue through the development assessment processes. In addition, we note that the development industry continues to call for greater flexibility, as well as greater certainty, in the planning system.

PIA ACT support the DAF model of development assessment introduced through the Planning and Development Act and Territory Plan in 2008. However, we see the opportunity, initially through this Community Facilities review and subsequently through other reviews, to improve the current system.

We consider some adjustments to the way the Zone Tables are outlined (permissible uses and associated development assessment track), together with changes to the Development Code can provide both the certainty and the flexibility that all stakeholders are seeking.

We request the Committee incorporate the following matters as part of its consideration and recommendations:

1. **Community Facilities Zone Development Table** – PIA ACT consider the zone development table (the lists of land uses allocated as exempt, Code track, Merit track, prohibited) should include some uses in the Code track, to 'encourage' developments that are desired in Community Facilities zones (for example; Child Care centres). Under the present Code a development that fully complies with every rule in the Code still is a Merit track DA.
PIA ACT consider that there should be a range of developments (land uses) that when designed to fully comply with Code rules, should then be a Code track DA. This provides more certainty in the planning process, a quicker assessment process and provides clear incentives for applicants to implement design outcomes that comply with the relevant rules.
2. **Definitions of land uses** – PIA ACT consider that the too much reliance is placed on terms such as "ancillary use" and "minor use" to facilitate development that is otherwise listed as 'prohibited' in the development table. This approach can sometimes contribute to the community's misunderstanding of the planning system when they become aware of a development proposal, do some research to find the Territory Plan Development Tables clearly describe the development as 'prohibited' but the community finds that ACTPLA have considered it and approved the development as an "ancillary use".
For example, PIA ACT understands that the multi-storey car park at the Canberra Hospital was not considered as a "car park" (because a Car Park is prohibited) and that it was lodged and considered by ACTPLA as an "Ancillary Use". This approach cannot enhance the community's understanding of the planning system when an 8 storey structure accommodating about 1,800 cars cannot be called a car park. We ask the committee to review the list of prohibited uses and remove uses that would be acceptable in a Community Facility Zone. We acknowledge that the terms "Ancillary Use" and "Minor Use" should remain as permissible uses in the Development Table, but ask that the Committee consider clearer definitions of these terms to provide more certainty in relation to the extent of an ancillary or minor use. In addition PIA ACT consider that it would be more simple and clearer to include a Rule in the Development Code to require certain uses to be ancillary to other community facility uses, rather than the comprehensive list of land uses listed as "prohibited" under the Development table.
3. **Development Code – "Intent"** – PIA ACT notes that the Variation proposes to remove of the statements of Intent from the Code. We do not support this approach and consider that it could result in assessment of DAs by ACTPLA without any understanding of the background to the Rule or Criteria. This will be amplified in cases where merit considerations are required, the circumstances for consideration of the merits will not be clear to the applicant, the community, nor possibly the ACTPLA assessing officer.
PIA ACT considers that this review is the opportune time to clarify these matters, (to enable other current and future Territory Plan reviews to incorporate the Committee's decisions) and ensure that the policy intent of the Code is implemented through the development assessment process.
While we note that there has been no status, purpose or power specifically ascribed to the "intent" of codes. (e.g. under s139(2) *d if the application is for approval of a*

development in the merit track—be accompanied by information or documents addressing the relevant rules and relevant criteria"), we consider that the Intent formed part of the Code, and the Code is a component of the Territory Plan. This should have resulted in the Intent being considered as part of ACTPLA's assessment to confirm that a DA is consistent with the Territory Plan. However, we note that the current approach was not clear in regards to the actual DA assessment process. Notwithstanding this, PIA ACT do not support the proposed approach of deleting the "Intent" from the Code and, hence, the Territory Plan. We consider that the policy intent of a Code should be outlined in association with the relevant Rules and Criteria and that the consideration of the Rules and Criteria should be in the context of what the Intent (planning policy) is trying to achieve.

4. **Development Code – "Rules and Criteria"** – PIA ACT consider that as far as practical each Criteria should have an associated rule and that there should be a direct and obvious relationship between the Rule and Criterion. There are currently a number of Criterion which do not have a corresponding Rule and this does not provide any certainty as to what is the 'baseline' level of consideration for a Development Application. Again this adds to the uncertainty in the planning process, for both the developer and the community. Additionally, the current assessment process does not give any clear indication as to the limit that a Rule can be varied. PIA ACT understand that there are regular development proposals where a Rule is effectively 'abandoned' and the application considered against the Criterion even when supporting documentation is minimal.

The Code should require compliance with the Rule unless there are specific design reasons for departure (demonstrated through a comprehensive report/statement against criteria) which demonstrates that design alternatives that would comply with the Rule are not feasible (this approach would be similar to the current approach for tree removal on leased land). In addition, to retain flexibility, but also ensure some degree of certainty, the Code should provide some guidance as to the acceptable level of departure from the Rule (e.g. at present, if a building setback rule is 6m and the associated criteria is "siting of buildings to achieve a reasonable level of privacy" – this could be interpreted to mean all buildings can be built on the boundary if they have a blank wall). PIA ACT are concerned that the removal of the statements of Intent from the Code provides even less guidance as to how the criteria are to be interpreted. This is compounded where there are no associated Rules to the specific criterion. PIA ACT consider that inclusion of some guiding principles, either as part of the Code or as 'companion documents' to the Code, to enable applicants and the community to consider the manner in which many qualitative terms (criteria) are considered during the development assessment process would be of benefit. This approach is directly consistent with the DAF *Guide for Writing Objective Rules and Tests in Development Assessment Requirements*.

PIA ACT also consider that Mandatory Rules could be kept to a minimum ensuring a high level of certainty but facilitating flexibility in the planning system.

We would be happy to further clarify our submission by attending a public hearing of the Committee. Should you require further information or clarification please contact Trevor Fitzpatrick (the PIA ACT Policy Committee chairperson) at trevor.fitzpatrick@purdon.com.au or by telephone on 6257 1511 or 0418 018 099.

Yours Sincerely



Hamish Sinclair
President PIA (ACT Division)



Trevor Fitzpatrick
PIA (ACT Division) Policy Committee