

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

**Draft Variation to the Territory Plan No. 302  
Community Facility Zone**

JULY 2011



## **Committee membership**

|                            |              |
|----------------------------|--------------|
| Ms Mary Porter AM MLA      | Chair        |
| Ms Caroline Le Couteur MLA | Deputy Chair |
| Mr Alistair Coe MLA        | Member       |

## **Secretariat**

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## Resolution of appointment

On 9 December 2008, 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 agreed that each standing committee can consider and make use of the evidence and records of the relevant standing committee appointed during the previous Assembly.<sup>1</sup>

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.<sup>2</sup>

## Terms of reference

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.

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<sup>1</sup> Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

<sup>2</sup> Legislative Assembly for the ACT, *Minutes of Proceedings No. 2*, 9 December 2008, pp14–18, accessible at <<http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/08MoP02.pdf>>

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## RECOMMENDATIONS

### RECOMMENDATION 1

3.2 The Committee recommends that Draft Variation 302 proceed, subject to the recommendations set out below in this report.

### RECOMMENDATION 2

3.12 The Committee recommends that the suitability of the site for specific developments be added to the community facility zone objectives.

### RECOMMENDATION 3

3.25 The Committee recommends that the terms “ancillary use” and “minor use” be clarified in the Community Facilities Zone Development Table.

### RECOMMENDATION 4

3.26 The Committee recommends that a rule linking specific categories of ancillary/minor use to other CFZ activities be included in the Territory Plan.

### RECOMMENDATION 5

3.27 The Committee recommends that planning information on the Environment and Sustainable Development Directorate website should include details of the definitions “ancillary use” or “minor use”.

### RECOMMENDATION 6

3.35 The Committee recommends that the ACT Government explore the possible benefits of including statements of intent in the *Planning and Development Act 2007*.

# 1 INTRODUCTION

- 1.1 Both Federal and ACT law and policy govern planning in the ACT. The *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwth)<sup>3</sup> establishes the National Capital Authority, which prepares and administers the National Capital Plan. The Act also enables the Legislative Assembly to make laws to establish a statutory planning authority – now the ACT Planning and Land Authority – and for that authority to prepare and administer a Territory Plan.<sup>4</sup>
- 1.2 The object of the Territory Plan is to ensure, 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.<sup>5</sup> The ACT *Planning and Development Act 2007* (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.<sup>6</sup>
- 1.3 The Territory Plan includes a statement of strategic directions, a map, objectives and development tables applying to each zone as well as a series of general, development and precinct codes. It also includes structure plans and concept plans for the development of future urban areas.
- 1.4 The Territory Plan Map graphically represents the applicable land use zones (under the categories of Residential, Commercial, Industrial, Community Facility, Urban Parks and Recreation, Transport and Services and Non Urban), precincts and overlays.

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<sup>3</sup> Accessible via: <<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/FF4122C876FCA3D5CA2572D700834EF2>>

<sup>4</sup> *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), Section 25.

<sup>5</sup> *Planning and Development Act 2007*, Section 48.

<sup>6</sup> *Planning and Development Act 2007*, Section 49.

- 1.5     Recognising that land use policies may change over time, the Act provides for variations to the Territory Plan, prepared by the ACT Planning and Land Authority for stakeholder comment. There can be a number of versions of a Draft Variation depending on the consultation program.
- 1.6     Under the Act the Minister has the discretion to refer a Draft Variation, within 20 working days of receiving it, to an appropriate committee of the Legislative Assembly for consideration and reporting. Currently the Standing Committee on Planning, Public Works and Territory and Municipal Services is the appropriate Committee.<sup>7</sup>
- 1.7     The Minister must not take action in relation to the draft plan variation until the committee of the Legislative Assembly has reported on the variation, unless the committee has not reported on the variation by the end of the period of six months starting on the day after the day the variation is referred.<sup>8</sup>
- 1.8     Following the Committee's tabling of its report in the Legislative Assembly, the Minister must take the findings of the Committee into account before making his decision in relation to the draft plan variation.<sup>9</sup> If the Minister approves it, he will table the proposed variation and associated documents in the Legislative Assembly.<sup>10</sup> Unless wholly or partially disallowed by the Assembly on a motion for which notice has been given within five sitting days, the variation will commence on the date nominated by the Minister.<sup>11</sup>
- 1.9     If the Minister does not refer a draft plan variation to an appropriate committee of the Legislative Assembly, the Committee is not prevented from considering the draft plan variation documents.<sup>12</sup>

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<sup>7</sup> *Planning and Development Act 2007*, section 73.

<sup>8</sup> *Planning and Development Act 2007*, section 75.

<sup>9</sup> *Planning and Development Act 2007*, sub-section 76(4) a.

<sup>10</sup> *Planning and Development Act 2007*, section 79.

<sup>11</sup> *Planning and Development Act 2007*, section 83.

<sup>12</sup> *Planning and Development Act 2007*, section 73(3).



## 2 THE PLANNING VARIATION

### Overview

- 2.1 Draft variation to the Territory Plan No 302 proposes to introduce new objectives for the community facility zone, to make changes to the development table for the zone, and to introduce a revised community facility zone development code. Details of the proposed changes are at Appendix C.
- 2.2 The variation applies to all community facility zoned land in the ACT.
- 2.3 The complete Draft Variation is available from the ACTPLA website.<sup>13</sup>

### Consultation by the ACT Planning and Land Authority

- 2.4 On 5 May 2010 ACTPLA released the Draft Variation 302 for public comment, inviting comments until 22 June 2010. ACTPLA received eight written submissions: one from an individual submitter; a Member of the Legislative Assembly; the Planning Institute of Australia (ACT Division); the Australian Institute of Architects (ACT Chapter); the University of Canberra, Woden Valley Community Council; Watson Community Association; and the Griffith/Narrabundah Community Council.
- 2.5 The key issues of public concern included:
  - Restrictions to unit titling for dwellings on Community Facility zoned land;
  - Requirements for adaptable housing where built on Community Facility zoned land;
  - Clarifying the objectives of the zone;

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<sup>13</sup> Available at:  
[http://www.actpla.act.gov.au/tools\\_resources/legislation\\_plans\\_registers/plans/territory\\_plan](http://www.actpla.act.gov.au/tools_resources/legislation_plans_registers/plans/territory_plan)

- Uncertainty and misunderstandings about the purpose of Schedule 1;
- Appropriateness of proposed building height limits;
- Removal of requirement for development applications to address Neighbourhood Plans after January 2011; and Use of Community Facility Zoned Land for special residential purposes.<sup>14</sup>

## **Consultation by the Standing Committee on Planning, Public Works and Territory and Municipal Services**

- 2.6     On 18 January 2011, pursuant to section 73 (2) of the *Planning and Development Act 2007*, the acting Minister for Planning, Mr Jon Stanhope MLA, referred Draft Variation to the Territory Plan No 302 to the Standing Committee on Planning, Public Works and Territory and Municipal Services for consideration and subsequent report to the ACT Legislative Assembly.<sup>15</sup>
- 2.7     The Committee considered the submissions on Draft Variation 302 lodged in response to ACTPLA's statutory consultation process.
- 2.8     An invitation for public submissions to the Committee was advertised in The Canberra Times on Wednesday 2 March 2011 and in The Chronicle on Tuesday 15 February 2011. The Committee also invited a wide range of stakeholders to provide written submissions on the proposed Draft Variation by 31 March 2011. On 31 March 2011 the Committee agreed to extend the closing date for submissions to 31 May 2011. The Committee received seven submissions [see appendix B]
- 2.9     The Committee held public hearings on 1 and 17 June 2011 [see Appendix A]

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<sup>14</sup> ACTPLA, Draft Variation 302, *Report on Consultation*, Dec 2010, p4.

<sup>15</sup> Letter from the Minister for Planning to the Standing Committee on Planning, Public Works and Territory and Municipal Services, received 18 January 2011.

### 3 COMMITTEE COMMENTS

- 3.1 The Committee notes that a satisfactory community consultation process has already been conducted by ACTPLA and that Draft Variation 302 has been amended since the public consultation version to take into account the majority of concerns raised in submissions to ACTPLA. The Committee was also advised by the Minister for the Environment and Sustainable Development that Draft Variation 302 would not have a broader impact on planning matters.<sup>16</sup> However, the Committee makes the following comments and recommendations.

#### RECOMMENDATION 1

- 3.2 **The Committee recommends that Draft Variation 302 proceed, subject to the recommendations set out below in this report.**

#### Community Facility Zone code track

- 3.3 The intention of a development track, such as code assessment, is to ensure that development applications can be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The Planning Institute of Australia (ACT Division) (PIA) outlined several areas of concern relating to the structure of the Community Facility Zone (CFZ) code, the structure of the CFZ development table and the general approach to development in the zone.
- 3.4 In its submission, PIA suggested that the Zone Development Table include some uses in the code track to ' "encourage" developments that are desired in Community Facilities zones', noting that currently, developments that are fully compliant with every rule in the Code are still treated as Merit Track development applications (DA).<sup>17</sup> PIA submitted that where a development

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<sup>16</sup> Mr Corbell, *Proof Transcript of Evidence*, 17 June 2011, p17

<sup>17</sup> Submission 4, p2

has been designed to fully comply with the Code rules, it should be a Code Track DA, providing 'more certainty in the planning process, a quicker assessment process and ... clear incentives for applicants to implement design outcomes that comply with the relevant rules.'<sup>18</sup>

- 3.5 At the Committee's hearing on 1 June 2011, the Policy Committee Chair of PIA (ACT Division) considered that the lack of uses included in the minimum assessment track code, 'is sending a message that the ACT have no specific developments that we wish to encourage and facilitate directly within community facility zones.'<sup>19</sup> He continued:

If the government has a series of policies to promote some sort of activity, why not make the development process quite easy? The code track option allows a developer to design the development entirely in accordance with the rules. The assessment and consultation process is abbreviated. There is no appeal. The certainty about carrying out that development is much greater. There is still an obligation on the developer to design the development in accordance with all the rules. If they cannot design it in accordance with the rules it still becomes a merit track and subject to appeals, and there is various other scrutiny there.<sup>20</sup>

- 3.6 PIA indicated 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.'<sup>21</sup>

- 3.7 The Committee was advised by the ACT Chief Planning Executive that:
- when the government produced the new Planning and Development Act, which was enacted in 2008, it was structured in a way that placed significant weight around the objectives and rules and criteria of the codes. There is no basis in law for statement of intent in the Planning and Development Act. And if you create such a mechanism, it will confuse

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<sup>18</sup> Submission 4, p2

<sup>19</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p3

<sup>20</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p3

<sup>21</sup> Submission 4, p2

the operation of those other components where the planners and those who are making applications and those who are wishing to make submissions need to have regard to the principles, the purposes, the rules and the criteria.<sup>22</sup>

- 3.8 Alluding to Australian and international planning principles, the PIA President added:

...there is a principle of cascade whereby you set objectives, you then design your requirements, you specify those requirements to give certainty to everybody and then development can respond to that. ... if you want something to happen and you are quite certain it is appropriate to the zone then perhaps you can ensure the rules cover everything that you are concerned about. You should locate that land use in that zone as code. The onus is on the development to fully comply.<sup>23</sup>

- 3.9 While acknowledging the potential advantages from the planning point of view, the Committee had some concerns about the merits of the proposal.
- 3.10 In response to the suggestion that one mechanism for addressing this concern could be the introduction of subzones, the PIA was strongly opposed, noting that any 'land uses in that zone should be able to either go there or not go there, based on their site-specific limitation',<sup>24</sup> but that the rules could be written to take account of any concerns, including in relation to public comment.<sup>25</sup>
- 3.11 The Committee noted that the Griffith/Narrabundah Community Association had related concerns about the suitability of sites for specific developments and had suggested an additional objective which would require decision-makers for development approvals to consider suitability.<sup>26</sup>

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<sup>22</sup> Mr Savery, *Proof Transcript of Evidence*, 17 June 2011, p16

<sup>23</sup> Mr Sinclair, *Proof Transcript of Evidence*, 1 June 2011, p3

<sup>24</sup> Mr Sinclair, *Proof Transcript of Evidence*, 1 June 2011, pp3-4

<sup>25</sup> Mr Sinclair, *Proof Transcript of Evidence*, 1 June 2011, pp3-4

<sup>26</sup> Submission no 3, p2

## RECOMMENDATION 2

3.12     **The Committee recommends that the suitability of the site for specific developments be added to the community facility zone objectives.**

3.13     The PIA considered that this review afforded the opportunity of better aligning government policy with the planning system:

... with some of these developments on the one hand the government promotes and looks for the sites to be developed for that purpose but, on the other, the planning system does not automatically facilitate that to happen. There is a mismatching in those two things. This policy review provides an excellent opportunity to align those a bit better—maybe not perfectly. I am not saying let us go all the way, but just let us look at some of those uses.<sup>27</sup>

3.14     The Team Leader of the Territory Plan Variation Unit informed the Committee that:

With regard to the precinct codes in this particular draft variation, their intention is to have a level of development and specify where the locations are that are not appropriate for some of the types of residential development that can occur within the community facility zone generally. So what they do is specify where land is required for community facility uses. Supportive housing was a use that was introduced into the territory plan. Its intention mainly was that, where there is land, possibly church facilities, where it is not well utilised, possibly supportive housing would be a good use.<sup>28</sup>

3.15     The overall intention for the Community Facilities Zone (CFZ) is to protect 'social and community uses from competition from other uses.'<sup>29</sup>

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<sup>27</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p4

<sup>28</sup> Ms Moser, *Proof Transcript of Evidence*, 17 June 2011, p21

<sup>29</sup> Ms Moser, *Proof Transcript of Evidence*, 17 June 2011, p21

## Definitions of land uses

- 3.16 The PIA suggested that there were currently a range of prohibited uses that it considered could be listed as permissible developments and be subject to impact and merit-based assessments.<sup>30</sup> PIA noted that there were already three uses currently listed in the prohibited table for the CFZ that are allowed through exemptions in the impact track, namely ‘agriculture’, ‘scientific research establishment’ and ‘shop’.<sup>31</sup>
- 3.17 In its submission, PIA observed that ‘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.’ PIA stated in its submission that it understood that the development application for the multi-storey car park at the Canberra Hospital had not been lodged as a ‘car park’, which is a prohibited use on CFZ land, but as an ‘ancillary use.’<sup>32</sup>
- 3.18 PIA subsequently wrote to the Committee to correct the record and advise the Committee that their statement regarding the development application for the Canberra Hospital car park was not correct. A copy of the letter is attached as Appendix D.
- 3.19 PIA drew attention to the apparent inconsistency and apparent lack of transparency associated with land uses that are otherwise prohibited being allowed to be developed because they have been considered ancillary or minor uses. Mr Sinclair observed:
- ... if you go on the web and look at ACTPLA’s website for DAs, and you are looking at their descriptions, a “minor use” does not tell you what it is. And you have to individually go into one and see what it is actually about.<sup>33</sup>
- 3.20 The Minister provided the following assurance when he appeared before the Committee:

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<sup>30</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p5

<sup>31</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p6

<sup>32</sup> Submission 4, p2

<sup>33</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p6

We have to be very clear that a piece of community facility land cannot be used because the government or a private developer decide they want to build a multistorey car park because it is a place to build a multistorey car park. But if they need to build a car park because there is a need to provide that facility so that people are able to access the primary use of the site, which is a childcare centre, a school or a hospital, say, then that is obviously an ancillary use and it makes sense to do that.<sup>34</sup>

- 3.21 PIA provided the Committee with a list of suggested land uses that are currently in the “prohibited” section of the Development Table, which it considered could be included within the ‘permissible’ section, either as Merit Track or Impact Track assessments. Land uses suggested by PIA that could be moved out of the ‘prohibited’ uses list included aquatic recreation facility, boarding house, car park, cemetery, drive-in cinema, financial establishment, home business, mobile home park, overnight camping area, plantation forestry, recycling facility, restaurant, road, single dwelling housing, tourist facility and veterinary hospital.<sup>35</sup> PIA emphasised that the transfer of land uses into the merit or impact tracks would not ‘carry with it a presumption of planning consent’, but would instead lead to an expectation that ‘the full planning and community consultative processes would then be undertaken to assess the appropriateness of any application’.<sup>36</sup>
- 3.22 PIA did not advocate the removal of ‘ancillary use’ and ‘minor use’ from the development table, but considered there was a need for ‘clearer definitions of these terms to provide more certainty in relation to the extent of an ancillary or minor use.’<sup>37</sup> PIA further suggested that it would be simpler and clearer for a rule to be included which required ‘certain uses to be ancillary to other community facility uses’ rather than the current list of prohibited land uses.<sup>38</sup>

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<sup>34</sup> Mr Corbell, *Proof Transcript of Evidence*, 17 June 2011, p23

<sup>35</sup> Submission 4b, p1

<sup>36</sup> Submission 4b, pp1-2

<sup>37</sup> Submission 4, p2

<sup>38</sup> Submission 4, p2



- 3.23 The Minister indicated that he understood the potential for some level of confusion but noted that the objective was:

to make it clear that there should be prohibitions on the use of this land and we have to be very clear that we cannot just take a piece of community zoned land somewhere in the suburbs and say, "That is a great spot for a car park." That would not be allowed. If you were to say, "We have got a childcare centre here and we have five car parks and we need another 10, because the childcare centre is getting busier," that is allowed. That is common sense. That should be permitted. That is really what these tables are all about.<sup>39</sup>

- 3.24 The Committee considered that a clear statement of what is prohibited should be included in the Community Facilities Zone Development Table either by the inclusion of another line that any of these may be a minor use or possibly or having another table of unacceptable primary use development but acceptable ancillary uses.

### **RECOMMENDATION 3**

- 3.25 **The Committee recommends that the terms "ancillary use" and "minor use" be clarified in the Community Facilities Zone Development Table.**

### **RECOMMENDATION 4**

- 3.26 **The Committee recommends that a rule linking specific categories of ancillary/minor use to other CFZ activities be included in the Territory Plan.**

### **RECOMMENDATION 5**

- 3.27 **The Committee recommends that planning information on the Environment and Sustainable Development Directorate website should include details of the definitions "ancillary use" or "minor use".**

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<sup>39</sup> Mr Corbell, *Proof Transcript of Evidence*, 17 June 2011, pp23-24

## Statement of “Intent”

- 3.28 PIA also expressed concern at the proposed removal of the statements of intent from the Code.<sup>40</sup> While noting that ‘there has been no status, purpose or power specifically ascribed to the “intent” of codes’, PIA nevertheless considered that the ‘Intent formed part of the Code, and the Code is a component of the Territory Plan.’<sup>41</sup>
- 3.29 PIA noted that the proposed variation included criteria with no associated rules and no accompanying statement of intent, which would add confusion to the Code.<sup>42</sup>
- 3.30 The Minister for Environment and Sustainable Development advised the Committee that the Community Facility Zone draft variation provided the first review of the policy content of the Territory Plan conducted as had been anticipated with the passage of the Plan in 2007. The objective of the review was to ensure that policies were contemporary and provide certainty and consistency for future planning rather than past use.<sup>43</sup>
- 3.31 Rather than removing the statements of intent altogether, PIA suggested that the statements should be made more succinct and directly address the objectives trying to be achieved. PIA also dismissed the argument that there was no mechanism to address this concern other than legislative change, arguing that the Code could be amended by simply including in the plan the statement: ‘When you are looking at criteria, have regard to the intent.’<sup>44</sup>
- 3.32 PIA also argued that the implications of the proposed change extended to the Territory Plan as a whole:

You are stripping all of the policy of all of the governments of the day since self-government that have put through variation processes and public consultation—every variation to date: all 300-plus of them. You are throwing all of that policy out. That is the decision that is

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<sup>40</sup> Submission 4, p2

<sup>41</sup> Submission 4, pp2-3

<sup>42</sup> Mr Fitzpatrick, *Proof Transcript of Evidence*, 1 June 2011, p9

<sup>43</sup> Mr Corbell, *Proof Transcript of Evidence*, 17 June 2011, p19

<sup>44</sup> *Proof Transcript of Evidence*, 1 June 2011, pp10-11

underpinning this removal of intent. It is a significant policy change. It fundamentally destroys the territory plan.<sup>45</sup>

- 3.33 The Chief Planning Executive advised the Committee that the concern raised by PIA about statements of intent had been raised in other contexts as a part of the revision of the policy content of the Territory Plan currently underway. He clarified that:

There is no basis in law for statement of intent in the Planning and Development Act. And if you create such a mechanism, it will confuse the operation of those other components where the planners and those who are making applications and those who are wishing to make submissions need to have regard to the principles, the purposes, the rules and the criteria. Those things are all interoperable.<sup>46</sup>

- 3.34 The Chief Planning Executive informed the Committee that ‘the purpose clause and the objectives of the zone, are, in effect, giving you the intent.’<sup>47</sup>

## RECOMMENDATION 6

- 3.35 **The Committee recommends that the ACT Government explore the possible benefits of including statements of intent in the *Planning and Development Act 2007*.**

- 3.36 In addition, PIA also advocated that there should, as far as practicable, be a rule associated with each criterion, noting that in the absence of rules and statements of intent, the lack of clarity was likely to open up more grounds for appeal.<sup>48</sup>

- 3.37 In its submission, PIA noted that currently there are a number of criteria without associated rules which results in a lack of ‘certainty as to what is the “baseline” level of consideration for a Development Application’.<sup>49</sup> PIA recommended including in either the Code, or as a companion document to the Code, some guiding principles to assist applicants and the community to

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<sup>45</sup> Mr Sinclair, *Proof Transcript of Evidence*, 1 June 2011, pp9-10

<sup>46</sup> Mr Savery, *Proof Transcript of Evidence*, 17 June 2011, p16

<sup>47</sup> Mr Savery, *Proof Transcript of Evidence*, 17 June 2011, p17

<sup>48</sup> *Proof Transcript of Evidence*, 1 June 2011, p10

<sup>49</sup> Submission 4, p3

understand how qualitative criteria are considered during the development application process.

- 3.38 In evidence to the Committee, PIA outlined scenarios where there is no governing principle connecting a rule and associated criteria:

... if there is a rule that says buildings in community facility zones shall be set back six metres from the residential boundary when a residential property adjoins it, that is associated with a criterion that says, "Buildings shall be sited to ensure privacy and the like." So that six metres just gets thrown out. We can therefore be right on the boundary if we need to be. So the design progresses on that basis. There is no connection between the rule and the criteria.<sup>50</sup>

- 3.39 The Committee was advised that a level of protection with regard to set back, overshadowing and solar access was maintained through generally applicable planning rules and criteria. The criteria are intended to achieve consistency with the 'desired character' of a zone as determined by the zone's objectives and encompassed such things as reasonable separation, privacy and solar access. The Team Leader, Territory Plan Variation Unit advised that, in relation to rule R10 and criterion C10:

The rule provided some certainty so that is, when it is being assessed, you meet the rule, that is great: it gets a tick. Alternatively, the Criterion is providing a performance standard...to demonstrate why you should have a different outcome from the outcome of the rule.<sup>51</sup>

- 3.40 The Committee was advised by the officers from the Environment and Sustainable Development Directorate that, in terms of development provision such as overshadowing or solar access and the policy review of two draft variations, there was currently 'a nexus between 302 and 306'<sup>52</sup> and that, following review processes:

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<sup>50</sup> *Proof Transcript of Evidence*, 1 June 2011, p11

<sup>51</sup> Ms Moser, *Transcript of evidence*, 17 June 2011, p 26

<sup>52</sup> Mr Savery, *Transcript of evidence*, 17 June 2011, p 26

the new provisions of 306 will expand on that, flesh all of that out and have a firm basis for that policy. But ultimately it will achieve the same end, and this is to protect adjoining residential property.<sup>53 54</sup>

## Neighbourhood Plans

3.41 Included in a number of submissions received by the Committee was a concern at the proposed inclusion of a sunset clause to remove the requirement for development applications to respond to neighbourhood plans.<sup>55</sup> The Committee noted that these submitters were concerned that an appropriate record of neighbourhood consultation and engagement processes should be maintained.

3.42 The Committee was advised by the ACT Government Chief Planning Executive that neighbourhood plans did not have any legal status in the planning system and that aspects of the neighbourhood plans that are 'relevant to each of the codes' are

embedded in the codes as codes, rules or principles. That is the exercise that we have been going through. So, incrementally, the neighbourhood plans, from a planning perspective, are becoming redundant instruments. It is not to say that all of that body of work that was produced has become redundant because we have actually extracted from it, just as we do with master plan exercises.<sup>56</sup>

Mary Porter AM MLA  
Chair  
6 July 2011

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<sup>53</sup> Mr Frazer, *Transcript of evidence*, 17 June 2011, p 25.

<sup>54</sup> Ms Le Couteur recommended that until the solar access provisions of Draft Territory Plan Variation 306 have been finalised and adopted into the Territory plan, the existing rules and criteria for solar access should apply to the new Community Facilities Zone Codes.

<sup>55</sup> Submission 1, 2, 3, 6 and 7

<sup>56</sup> Mr Savery, *Transcript of evidence*, 17 June 2011, p 21

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

## Appendix A Submissions

### List of Submissions

| No. | Author                                                         |
|-----|----------------------------------------------------------------|
| 1   | Mr Austin Lynch                                                |
| 2   | Deakin Residents Association                                   |
| 3   | Griffith-Narrabundah Community Association Inc                 |
| 4   | Planning Institute of Australia (ACT Division)                 |
| 4b  | Planning Institute of Australia (ACT Division) - supplementary |
| 5   | Ms Margaret McCay                                              |
| 6   | Inner South Canberra Community Council                         |
| 7   | Old Narrabundah Community Council Inc                          |

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



## Appendix B Witnesses appearing

### List of Witnesses

**1 July 2011**

- **MR TREVOR FITZPATRICK**, Chair, ACT Policy Committee, Planning Institute of Australia
- **MR HAMISH SINCLAIR**, President, ACT Division, Planning Institute of Australia

**17 July 2011**

- **MR SIMON CORBELL**, Minister for the Environment and Sustainable Development
- **MR BRUCE FRAZER**, Acting Manager, Development Policy, ACT Planning and Land Authority, Environment and Sustainable Development Directorate
- **MS SONYA MOSER**, Team Leader, Territory Plan Variation Unit, ACT Planning and Land Authority, Environment and Sustainable Development Directorate
- **MR NEIL SAVERY**, Chief Planning Executive, ACT Planning and Land Authority, Environment and Sustainable Development Directorate



## Appendix C Proposed Changes DV302

### 2.1 Proposed changes to the Territory Plan Map

The proposed changes to the Territory Plan map are indicated in Figure 2.1 at Part 2 of this document and are detailed as follows:

- Remove the existing E Education (school grounds and ovals) overlay from the map.
- Substitute the community facility zone with the residential RZ3 urban residential zone at Belconnen section 87 blocks 13, 14 and 15.
- Substitute the community facility zone with the parks and recreation PRZ1 urban open space zone at Belconnen section 87 block 12.

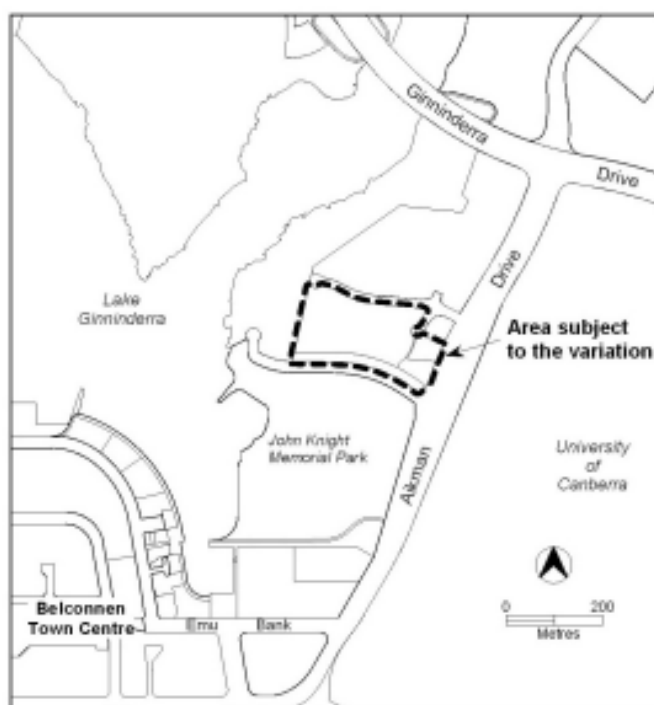


Figure 1: Location plan of the area to be rezoned

### 2.2 Proposed changes to the Territory Plan

#### 2.2.1 Proposed changes to the community facility zone objectives

- Zone objectives have been revised for clarity and include social inclusion, social sustainability and community formation principles.

### 2.2.2 Proposed changes to the community facility zone development table

- Replace the existing development table with a new table which includes the following:
  - Area specific provisions for sites at Forrest and Belconnen have been deleted.
  - Superfluous references to other codes have been removed.
  - Notes relating to the application of codes, where no longer listed in the development table, have been included.
  - Development for 'funeral parlour' has been moved from the merit track and inserted into the prohibited development list.
  - Lease variations, a form of development under the *Planning and Development Act 2007*, have been included as merit or impact assessable depending on the type of approval sought.
  - Supportive housing and retirement village have been added to the prohibited list where identified in a suburb precinct code.

### 2.2.3 Proposed changes to the community facility zone development code

Replace the existing development code with a new code which introduces the following:

- New rules have been included clarifying that all supportive housing and retirement villages in the community facility zone cannot be unit titled or separately subdivided.
- The rule for permissible number of storeys for buildings has changed.
- The rules and criterion for business agency, office and public agency have been amended to clarify the intent.
- Criterion relating to meeting the requirements of general codes has been removed as the application of these codes is contained in a new table.
- The specific requirement for development to comply with the community and recreation facilities location guidelines general code has been deleted. This general code is listed in Part A with the other applicable general codes.
- The rule and criterion requiring applicants to demonstrate how their proposal complies with key strategies of any neighbourhood plan has been removed. That provision was only intended to apply until 1 January 2011.
- Water sensitive urban design provisions have been removed. These provisions are required by the Water Sensitive Urban Design General Code.
- Duplicated provisions requiring solar access have been removed.
- Figure 1 (Belconnen section 87) and figure 3 (Forrest section 24 block 7) and corresponding site specific provisions for additional development have been deleted as these are no longer relevant.

#### 2.2.4 Inclusion of suburb precinct codes

- Suburb precinct codes have been included to map community facility zoned land where supportive housing and retirement village are prohibited.

#### 2.2.5 Changes to definitions

- A definition of retirement village has been included to replace the current definition of retirement complex.
- A definition of retirement village scheme has been included as it is referred to in the definition of retirement village.
- The Territory Plan has been amended to include these definitions are found in a general code, or elsewhere.

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

## **Appendix D Correspondence**

Correction

Mr Trevor Fitzpatrick, Chair, Policy Sub-Committee, Planning Institute of Australia  
(ACT Division)







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

10 June 2011

Ms Mary Porter MLA  
Chair  
Standing Committee on Planning, Public Works and Territory and Municipal Services  
ACT Legislative Assembly

Dear Ms Porter

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

I refer to my presentation to the Standing Committee on Planning, Public Works and Territory and Municipal Services held on Wednesday 1 June 2011.

Since the Committee hearing, it has been brought to my attention that my statements on page 5 of the Proof Transcript of Evidence in relation to the Development Application for the Canberra Hospital were not correct.

In the PIA submission to the Committee and in my statements it was suggested

*that \$45 million eight-storey car park was never called a car park at the hospital. Everybody would advocate that, correctly, it was called an ancillary use because it is a car park ancillary to the hospital. But if I am just a member of the community, why couldn't I read a DA that said "car park"? They did not. They read a DA that said "ancillary use"*

I have received copies of the public notification of the Development Application as well as the Development Application form and accept that my comments were not correct.

I apologise for this error and trust that the Committee will ignore this incorrect statement in considering the overall submissions made by the ACT Division of the Planning Institute of Australia.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'T Fitzpatrick'.

Trevor Fitzpatrick  
Chair, Policy Sub-Committee  
PIA (ACT Division)