# PLANNING SYSTEM REFORM PROJECT

# Technical paper 2

## Review of the Territory Plan

ACT Government

building our city
building our community

ACT Planning & Land Authority

This is one of five documents that describe proposed reforms to the ACT planning system.
The complete series is as follows:

*Directions paper*
*Technical paper 1 – Leasehold administration in the ACT. Its role in the planning system*
*Technical paper 2 – Review of the Territory Plan*
*Technical paper 3 – Streamlining development assessment and building approval processes in the ACT*
*Technical paper 4 – Review of environmental impact assessment in the ACT*

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# Overview of proposed reforms

The Territory Plan (the Plan) is a living document that needs to be modified over time to meet the evolving needs of the Australian Capital Territory and the people who live in it.

The Plan has changed in the last few years in an effort to make it more user-friendly and strategically clear. Despite this, many still hold the view that the Plan is overly complex and cumbersome and, more specifically, that it is quite difficult to ascertain the range of controls applying to a specific parcel of land. The substance of this view will be tested during consultation with the public, government agencies and industry groups on the reform proposals recommended in this document.

Changes to the form and content of the Plan and associated documents are proposed, building on the changes already made to the Plan, and incorporating those aspects of current leading national practice suited to the particular circumstances of the ACT.

### PLANNING STATEMENTS

How should the components of *The Canberra Plan*, particularly *The Canberra Spatial Plan* be best integrated into the planning system? What role and status should they have?

The favoured option is to require the Authority to have regard to *The Canberra Spatial Plan* in the preparation of planning policy and variations to the Territory Plan, but not in the assessment of development applications.

Other high level policy documents that could be incorporated into the Plan are planning statements pitched at national and regional level including reference to settlement patterns, transport and communications, infrastructure (including water supply) and sustainability. Planning statements from relevant government agencies could also be added covering such matters as heritage conservation, tree protection, and nature conservation.

The possibility of further integrating the Territory Plan and the National Capital Plan should also be examined, including references to matters of national significance.

### THE TERRITORY PLAN

This paper proposes that the Territory Plan comprise three main elements:

1. the Planning Strategy for the ACT, which is a set of planning statements covering areas of national, regional and Territory interest; it may also incorporate *The Canberra Spatial Plan*
2. the Use and Development Plan, which is made up of:
   - a zoning framework
   - development and use tables
   - planning rules in the form of codes
3. the Map

## ZONES

The number of land use policies should be reduced from the current sixteen, and should be known as zones. Such zones should provide for a greater range of permissible uses that are consistent with relevant planning statements, to increase flexibility and reduce the need for variations to the Plan.

Sub-zones (currently area specific policies under the Plan) should be renamed 'precincts'. However, they should be retained as separate entities only where significant distinctions in terms of planning outcomes are identified, and where they can be expressed with clarity of purpose and application.

Defined land should be retained, but renamed 'future urban zone' to better express its intent. It should be depicted on the map as a single distinctive colour and the associated principles and policies made readily available to the public in a form that clearly discloses the general pattern of future urban development.

## PLANNING RULES

Planning rules—such as design and siting controls, and land use restrictions—are currently found in the Territory Plan, Crown leases and a myriad of other documents, plans and guidelines.

Planning rules relating to the design and siting of buildings and structures should be retained in codes forming part of the Use and Development Plan, or in planning guidelines as determined by their status and level of discretion. The exception will be planning rules that are crucial to making a distinction between precincts (for example, building height and density controls) – these may be retained in the Plan itself.

As a separate task, all planning rules should be reviewed in terms of their efficacy and compliance with current policy directions.

## VARIATIONS TO THE PLAN

In response to criticism that the process of varying the Territory Plan is often too costly and time consuming, reforms in three key areas could be considered. Firstly, the provisions of the Plan could be made more flexible to reduce the need for Plan variations whilst maintaining the integrity of and public confidence in the Plan. Secondly, the Authority could be empowered to approve variations to Crown leases to add uses that are neither permissible not prohibited, but only after rigorous impact assessment. Thirdly, discretion could be given to the relevant Minister and to the Legislative Assembly to refer a draft variation to the relevant Legislative Assembly committee (currently the Standing Committee on Planning and Environment). At present such a referral is mandatory.

**DEVELOPMENT ASSESSMENT**

Any changes to the current Territory Plan should take account of *A leading practice model for development assessment in Australia* by the Development Assessment Forum, particularly in relation to development assessment 'tracks'. They determine the way a development proposal is assessed according to its compliance with relevant codes and its potential for environmental impact. This paper largely supports this approach, with the exception of the self-assessment track, which broadly allows applicants to determine their own development applications, subject to criteria.

# List of recommendations

**RECOMMENDATIONS ABOUT STRATEGIC PLANNING**

- *Incorporate the strategic principles for the sustainable development of the ACT into the Planning Strategy for the ACT.*
- *Incorporate the strategic principles of* The Canberra Spatial Plan *into the Planning Strategy for the ACT.*
- *That the Territory Plan makes reference to matters of national and regional significance.*
- *That the Planning Strategy for the ACT be taken into account only in relation to variations to the Territory Plan rather than as matters for consideration for individual development applications.*
- *Planning statements on sustainable development found in the Territory Plan should be reviewed in light of current leading national practice and proposed ACT Government sustainability principles, and be incorporated into the Planning Strategy for the ACT.*
- *Hold further discussions between the National Capital Authority and the Planning and Land Authority on possible further integration of the Territory Plan and the National Capital Plan.*

**RECOMMENDATIONS ABOUT LAND USE POLICIES AREAS (ZONES)**

- *Adopt the term 'zone' instead of 'land use policies area'.'*
- *Review the zone structure of the Territory Plan with a view to reducing the number of zones.*
- *Use the term 'future urban' zone instead of the term 'defined land'.*
- *Identify future urban zones (defined land) on the map using a distinctive single colour.*
- *The associated principles and policies for future urban zones (defined land), together with any associated maps, should be made readily available to the public through on-line and traditional means.*
- *Undertake a separate study into the options for the review and updating of principles and policies for future urban zones (defined land) as and when appropriate.*
- *Principles and policies for future urban zones (defined land) should be added to the matters for the consideration of development applications for estate development plans.*
- *That precinct codes incorporate statements of desired character for selected localities and that they be recognised as matters for consideration in the assessment of development applications.*

**RECOMMENDATIONS ABOUT USE AND DEVELOPMENT**

- *Prepare a Use and Development Plan and incorporate it into the Territory Plan.*
- *That development tables in the Territory Plan list development under five tracks—'exempt', 'code assessable', 'merit assessable', 'impact assessable', and 'prohibited'.*
- *That use tables in the Territory Plan list uses under 'permissible', 'permissible only with impact assessment', and 'prohibited'.*
- *Give the Authority the power to approve variations to Crown leases (as development applications) for uses listed as 'permissible only after impact assessment' under the Territory Plan, but only after rigorous impact assessment.*

**RECOMMENDATIONS ABOUT PLANNING RULES AND GUIDELINES**

- *Planning rules should be retained in the Territory Plan written statement only if they:*
  - *relate to the permissibility of uses*
  - *are fundamental to the distinction between sub-zones (area specific policies areas)*
  - *mirror provisions of the National Capital Plan.*
- *Transfer planning rules taken from the written statement into codes or planning guidelines.*
- *Prepare a series of templates for documents containing planning rules to achieve a consistency in form and content with particular emphasis on how performance measures are to be applied, statements of introduction and citation, and the formatting of provisions to be acceptable for inclusion in electronic assessment documents.*
- *That a separate, comprehensive review of planning rules be undertaken, and that each rule be appraised against current leading national practice.*
- *That codes and planning guidelines become the primary subsidiary documents for the purposes of development assessment.*
- *Provisions for the amendment of planning guidelines should be formulated and transferred to the Land Act with the provisions affecting planning guidelines contained in Part A3 section 7 of the Territory Plan.*
- *Delete the references to lease and development conditions from Residential Design and Siting Code for Single Dwellings (Appendix III.1) and Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2).*

**RECOMMENDATIONS ABOUT MASTER PLANS AND NEIGHBOURHOOD PLANS**

- *Master plans cease to be matters for consideration in development assessment. Master plans should continue to be a vehicle for the development of policy with community consultation, but their role should be confined to providing recommendations for variations to the Territory Plan, codes or for new or revised planning guidelines.*
- *Neighbourhood plans cease to be matters for consideration in development assessment. Neighbourhood plans should continue to be a vehicle for the development of policy at a local level with community consultation, but their role should be confined to providing recommendations for variations to the Territory Plan, codes or for new or revised planning guidelines.*
- *That the current role and status of community value statements be separately reviewed, including the option that they be given renewed status in local policy development.*

**RECOMMENDATIONS ABOUT THE ROLE OF THE LEGISLATIVE ASSEMBLY**

- *Allow the Minister for Planning to decide whether a draft Territory Plan variation is to be referred to the relevant committee, with a further provision that the Legislative Assembly will have the power to direct such referral, subject to disallowance.*
- *The allowable time for the relevant committee of the Legislative Assembly to report on a variation referred to it should be limited through legislation, regulation or some other suitable mechanism.*
- *Consider the range of minor variations to the Territory Plan that can be the subject of an abridged process of preparation, consultation and adoption.*
- *Give the relevant committee of the Legislative Assembly the discretion to decline to report to the Legislative Assembly on a draft variation to the Territory Plan.*

**OTHER RECOMMENDATIONS ABOUT THE TERRITORY PLAN**

- *That the administrative provisions relating to the preparation and amendment of subsidiary documents be located in the Land Act or its regulation rather than the Territory Plan.*
- *Investigate the possibility of providing a warranty of currency for the on-line version of the Territory Plan.*
- *Undertake a separate, comprehensive review of definitions in the Territory Plan.*

# 1. Introduction

This paper is designed to prompt discussion on the form and content of the Territory Plan, and how it might better reflect current national leading practice and meet the needs of users.

It is part of a wider planning system reform project launched by the Minister for Planning in December 2004. The aim of the project is:

> *to create a contemporary planning and land administration system, processes and practices that will provide greater certainty, clarity and consistency, and which is flexible, timely, less repetitious and administratively manageable.*

While there have been some reforms to the Territory Plan (Appendix A), it is still seen by some as overly complex and cumbersome. Some of this is a result of its structure, and some is because of the terminology used. The extent and nature of such critical views will be clarified during future consultation with the public, government agencies and industry groups.

# 2. The Territory Plan—an overview

The Territory Plan exists to manage land use change and development in the ACT. It provides a means of ensuring that the ACT develops in the direction set by the ACT Government, the Legislative Assembly and the community. Together with the *Land (Planning and Environment) Act 1991* (the Land Act) and the National Capital Plan, it is the framework against which development proposals are assessed.

The basis for the Territory Plan is established in the Land Act. This Act also gives the Planning and Land Authority (the Authority) the power to initiate variations to the Territory Plan (see Appendix B for more information).

## 2.1 The purpose

The purpose of the Territory Plan is broadly expressed through section 7 of the Land Act (see Appendix B). The explanatory notes to Part A of the Plan also indicate that:

1. Its primary purpose is to guide development through the development assessment process. In addition the Plan specifies permissible uses that effectively limit the range of uses that can be included as permitted in a new or varied Crown lease.
2. Its secondary role is to test variations to the Plan itself through the application of the strategic principles found in Part A2 as revealed in its explanatory notes:

   > *The following Principles indicate how the Object and Goals of the Territory Plan are to be achieved, and set directions for the more detailed policies in Parts B and C. In particular, they are intended to provide a basis for consideration of proposed variations to the Plan.*

The planning principles currently found in Part A have a role and purpose beyond the testing of variation proposals. They also contain planning statements for the ACT that describe the direction of future development.

## 2.2 The current structure

The Territory Plan is currently made up of a map, a written statement, and principles and policies for the development of areas of 'defined land'.

There is also a set of subsidiary documents—including planning guidelines and master plans—that are given status by the Territory Plan. As a result, they play a role in the assessment of development applications.

The written statement is the most complex. It is described in more detail in the next section.

## COMPONENTS OF THE WRITTEN STATEMENT

### Part A—General Principles and Policies

Part A of the written statement sets out a range of general principles and policies as follows:

- Section A1—Object and Goals—this section sets out the broad object and goals of the Plan.
- Section A2—Strategic Principles—this section details the planning principles that form the strategic framework for the land use policies in Part B.
- Section A3—Plan Administration Policies—this section contains a range of policies relating to the administration of the Territory Plan and implementation of specific provisions in Parts B and C.

### Part B—Land Use Policies

Part B of the Written Statement sets out detailed objectives and policies for regulating land use and development in different areas of the Territory. These are designed to give effect to the object of the Plan and the strategic principles set out in section A2. Each section of Part B relates to one of the sixteen categories of land use depicted by the corresponding colour on the Territory Plan Map. The name of each group of land use policies refers to the predominant land use within that category. Land use policies set out in Part B consist of one or more of the following elements:

- objectives—a formal statement of the planning aims sought by the land use policy
- permissible uses—each land use policy has a table of permissible uses. Tables for residential, commercial, industrial and community facilities land use policies also cross-reference the relevant controls related to a particular use
- controls—the controls are the specific provisions or planning rules for each land use policy
- Area Specific Policies—identify specific objectives or controls applying to sub-areas or precincts within a particular land use policy area. The sub-areas or precincts are identified either on the Territory Plan Map or in precinct diagrams contained within the land use policy area.

### Part C—Overlay Provisions

Part C sets out the policies relating to various overlays identified on the Territory Plan Map with distinctive borders or symbols, or a combination of borders and symbols. These designations relate to:

- public land
- area specific policies
- special requirements (from the National Capital Plan)
- draft variations to the Territory Plan
- heritage places register
- defined land
- public utilities
- inter-town public transport route
- land use policy subject to review.

For example, land subject to a draft plan variation is shown edged red with a symbol 'v'.

**Part D—Definitions of Terms**

This part sets out the definitions of terms used in the Territory Plan.

**Appendices**

- Appendix I—Water Use and Catchments Policies—this sets out the specific objectives and policies relating to the use and management of the Territory's water resources. The policies are set out in groupings that are identified by the name of the predominant water use planned for that particular area. Each group of policies relates to a specific water catchment.
- Appendix II—Mandatory Preliminary Assessments—this sets out the classes of 'defined decisions' (land use and development proposals) for which a preliminary environmental assessment in accordance with Part 4 of the Land Act is mandatory.
- Appendix III—Residential Design and Siting Codes—this contains the codes referred to in the residential land use policy.
- Appendix IV—Signs Policies—this sets out the policies relating to control of advertising and other signs.
- Appendix V— deleted (formerly the Heritage Places Register).
- Appendix VI—Telecommunications Facilities Policies—this comprises policies relating to the installation of telecommunications facilities.
- Appendix VII—Clearance Zone Policies—this contains requirements for clearance (buffer) zones around major facilities.

## 2.3 Relationship between the Territory Plan and the lease

Under s.222 of the Land Act, 'development' includes variations to Crown leases. As a result, a variation to a Crown lease requires that a development application be lodged with the Authority, either as a separate application or, more commonly, in conjunction with an application for the erection of a building. Such an application typically (but not always) contains a request for a variation to the purpose clause of the Crown lease to allow a particular use and, sometimes, to remove currently permitted uses.

Section 12 of the Land Act preserves the rights derived from an estate in a particular parcel of land when the Territory Plan came into effect. This means that if a lease permits a purpose that is now inconsistent with the Territory Plan (for example, a commercial use in a residential land use policy), the right to develop the land for this purpose is preserved.

The relationship between a Crown lease and the Territory Plan is best understood by noting that a lease sets out *permitted* uses for a particular parcel, while the Plan establishes *permissible* uses. In effect this means that a proposal for a use permissible under the Plan can be approved only if it is permitted under the relevant Crown lease.

At its heart the Plan controls development—which is mostly the design and siting of buildings and other structures. The *use* of those buildings and the land is determined by the

relevant Crown lease (except in the case of home business). The Plan also controls use, but this control is exercised only as a constraint on the uses that can be added to a Crown lease. A proposal to vary a lease is defined as development under the Land Act, but this is essentially an administrative device; no physical development is involved.

For unleased Territory land (land for which there is no Crown lease and therefore no purpose clause) *permissible* uses under the relevant land use policy in the Plan effectively become *permitted* uses for the purposes of development assessment. For example, when assessing a development application for a new public road on unleased Territory land the Authority must refer to the relevant permissible uses table to determine whether the proposal is permitted.

For unleased Territory land that is public land, permitted uses may be further limited by adopted plans of management (under Part 5 of the Land Act).

*Technical paper 1 – Leasehold administration in the ACT* proposes some changes to this relationship.

# 3. A proposed new structure for the Territory Plan

This paper proposes that the Territory Plan incorporate three main elements:

1. Planning Strategy for the ACT, which is a set of planning statements covering areas of national, regional and Territory interest; it may also incorporate *The Canberra Spatial Plan*
2. Use and Development Plan, comprising:
   - a zoning framework (zones and precincts)
   - development tables
   - use tables
   - planning rules in the form of codes
3. Map

The Use and Development Plan will also apply to the future urban zone (currently known as defined land) but, instead of objectives and rules for development, it will contain principles and policies for future development, including subdivision.

Planning rules relevant to the assessment of development applications may also be contained in subsidiary documents such as planning guidelines.

The overall structure will be similar to that shown in Figure 1. More detail about the proposed new structure, and how it differs from the existing structure, is in the rest of this paper.

Figure 1: Proposed structure for the Territory Plan and associated instruments

## THE LAND ACT

**Objects**
General objects should be formulated covering its key function:
- the Territory Plan
- land administration
- development assessment

**For the Territory Plan**
- object and purpose
- content
- administration including the process of variation, and requirements for monitoring and review

## NATIONAL CAPITAL PLAN

## TERRITORY PLAN

### THE MAP

### PLANNING STRATEGY FOR THE ACT

**Purpose**
to present a 30-year planning strategy for the ACT that is not inconsistent with the National Capital Plan
- to guide the preparation of and variations to the Use and Development Plan and subsidiary documents

**User guide**

**Strategic principles**
- national
- regional
- territory (including the Canberra Spatial Plan)
- relevant ACT government policies

**Matters for consideration**
- for plan variations
- for the preparation of subsidiary documents

### USE AND DEVELOPMENT PLAN

**Purpose**
- to guide development in a manner consistent with the Planning Strategy for the ACT
- to specify the range of uses that can be permitted in a new or varied Crown lease

**User guide**

**Matters for consideration**
- for development assessment
- for variations to Crown leases

**Zones**
- objectives
- precincts and fundamental rules

**Development tables**
- exempt
- code assessable
- merit assessable
- assessable only after impact assessment
- prohibited

**Use tables**
- permissible
- permissible only after impact assessment
- prohibited

**Overlays**

**Principles and policies for future urban zones**

**Planning rules**
- codes including precinct codes and relevant agency policies

## PLANNING GUIDELINES

# 4. Planning strategy for the ACT

*Recommendations:*

- *Incorporate the strategic principles for the sustainable development of the ACT into the Planning Strategy for the ACT.*
- *Incorporate the strategic principles of* The Canberra Spatial Plan *into the Planning Strategy for the ACT.*
- *That the Territory Plan makes reference to matters of national and regional significance.*
- *That the Planning Strategy for the ACT be taken into account only in relation to variations to the Territory Plan rather than as matters for consideration for individual development applications.*
- *Planning statements on sustainable development found in the Territory Plan should be reviewed in light of current leading national practice and proposed ACT Government sustainability principles, and be incorporated into the Planning Strategy for the ACT.*

The Planning Strategy for the ACT is to be a distinct part of the Territory Plan that will present a strategic direction for the sustainable development of the ACT over the next 30 years or so.

Most planning schemes have an equivalent statement. Some are a list of high-level goals and objectives, common in planning schemes in NSW (Appendix D). Others are broad statements of intent, such as those found in Part A of the current Territory Plan.

The Planning Strategy for the ACT (the Strategy) will have three key roles:

- to clearly present a medium-term to long-term planning strategy for the Territory including its relationship to the region and its role as the national capital
- to test proposed variations to the Territory Plan and subsidiary documents
- to identify issues that might be considered when the Authority scopes environmental impact statements and planning studies (as outlined in *Technical paper 4 – Review of environmental impact assessment in the ACT*).

It will incorporate the strategic principles currently found in Parts A1 and A2 of the Territory Plan and the planning statements found in *The Canberra Spatial Plan* and related documents. It will also make reference to the National Capital Plan and any relevant adopted regional planning document, as appropriate.

Approaches to the presentation of more specific policy statements vary more widely. Some schemes—notably most Local Environmental Plans in NSW, and the City of Perth Planning Scheme No.2—rely on a list of objectives or statements for each zone (Appendix D).

Planning statements are currently found:

- in Parts A1 and A2 of the Territory Plan
- as objectives for all land use policies and many area specific policies (Part B)
- in *The Canberra Spatial Plan*.

## PART A OF THE TERRITORY PLAN

Currently, Part A of the written statement sets out a range of general principles and policies—the general planning statements found in almost all planning schemes. Only Sections A1 and A2 will be incorporated into the Planning Strategy for the ACT. Section A3 will be included in the Use and Development Plan.

Currently these general policy statements are typically not taken into account in the assessment of development applications, especially the principles and policies found in Section A2 of the Territory Plan. Because of their broad application, these statements relate only to the preparation of variations to the Territory Plan, rather than to the assessment of development applications. It is recommended that this should not change.

Sustainable development is an important principle found at the beginning of Part A2. Despite its prominence and its relatively recent revision (February 2002), the text should be reviewed in the light of current leading national practice, and the pre-eminence given to sustainability by the ACT Government and the Authority.

The ACT Government recently indicated its intention to prepare sustainability legislation in the near future. Due account should be given to this initiative.

## THE CANBERRA SPATIAL PLAN

*The Canberra Spatial Plan* (March 2004) will be fundamental to land use planning for the ACT over the next 30 years or so. It outlines a strategic direction that will help manage change and provide for growth to achieve social and environmental sustainability. It includes *The Sustainable Transport Plan for the ACT* (April 2004) for planning and policy formulation purposes.

*The Canberra Spatial Plan* is intended to guide the Territory in its allocation of resources, such as the use of land and the construction of capital works. It is also intended to inform changes to both the National Capital Plan and the Territory Plan.

Currently *The Canberra Spatial Plan* is not recognised by the Territory Plan or indeed by any ACT legislation. To play a guiding role in framing planning policy, particularly in the preparation of draft variations to the Territory Plan, it needs to be incorporated into the Territory Plan as the foundation of the Planning Strategy for the ACT.

## REGIONAL ISSUES

The Territory Plan should acknowledge and respond to planning and environmental issues that arise in the Australian Capital Region of south-eastern NSW.

This is done to some extent in *The Canberra Spatial Plan*, which identifies the following regional issues:

- the accommodation of future population growth
- water management and environmental protection
- support for economic diversity and growth
- regional transport linkages
- provision of facilities and services.

The ACT Government is committed (through *The Canberra Spatial Plan*) to working cooperatively with NSW state and local governments to address cross-border issues. Such issues include establishing a Regional Management Framework, which recognises a Regional Settlement Strategy and Sydney–Canberra Corridor Strategy, with a view to reaching agreements to achieve sustainable management of growth in the region.

A work plan for the proposed ACT–NSW Regional Management Framework lists as topic areas:

- water supply and catchment management
- settlement patterns
- infrastructure
- economic development, including an investment strategy to ensure infrastructure is provided in a coordinated and efficient manner (target date 2005)
- service delivery, including an urban development program (target date 2005).

# 5. Use and Development Plan

*Recommendation:*

- *Prepare a Use and Development Plan and incorporate it into the Territory Plan.*

The second component of the Territory Plan is the Use and Development Plan. The Use and Development Plan will address:

1. the regulation of use:
    - to specify the range of uses that can be permitted in a new or varied Crown lease (permissible uses)
    - to guide the use of public land in concert with plans of management
2. the design and siting of buildings and structures:
    - to guide the development of buildings and structures
    - establish a framework for the development of future urban zones (defined land).

To achieve these distinct purposes, the Use and Development Plan will comprise the following three components:

1. common components:
    - a zoning structure
    - objectives for each zone and precinct
2. components related to the regulation of use:
    - a table of uses for each zone and precinct, with:
        i) permissible uses (permitted uses for public land)
        ii) uses permissible after impact assessment
        iii) prohibited uses;
    - matters for consideration in the assessment of development applications for variations to Crown leases
3. components related to the design and siting of buildings and structures:
    - critical planning rules for each zone and precinct
    - codes for the design and siting of buildings and structures
    - matters for consideration in the assessment of development applications for buildings and structures
    - principles and policies for future urban zones (i.e. defined land).

The Use and Development Plan will also include some planning rules, but only where they are essential for distinguishing between precincts. For example a residential medium-density precinct may be distinguished from a residential low-density precinct through a combination of building height and plot ratio controls. Other planning rules will be contained in codes that form part of the Territory Plan.

Codes will inherit the same statutory procedures for amendment that apply to the whole document. Currently this involves the approval of the Legislative Assembly, after extensive public consultation and scrutiny by the Assembly's Standing Committee on Planning and Environment (see section 8.1 below for discussion of proposals to streamline this process).

Development approval cannot be given if there is a departure from a code's planning rules, though departures can be tolerated when the rule has the status of a performance standard and it can be justified against performance criteria or planning statements.

Planning rules adopted by the Authority from time-to-time can continue to exist outside the Use and Development Plan as planning guidelines. Their status and role in development assessment may be prescribed in the Use and Development Plan or in the Land Act, and they are likely to require only that these rules be 'carefully considered' rather than being mandatory controls. A discussion on planning rules and codes and related recommendations is found in chapter 7 of this paper.

## 5.1 Zones (land use policies)

*Recommendations:*

- *Adopt the term 'zone' instead of 'land use policies area'.'*
- *Review the zone structure of the Territory Plan with a view to reducing the number of zones.*

#### TERMINOLOGY

The Territory Plan currently uses the term 'land use policies area' to describe what most other jurisdictions call a zone. Most land use policies are concerned with built form rather than with controlling use. The term 'zone' instead of 'land use policies area' is a simple change that will bring the Territory Plan into line with most other local planning schemes.

#### ZONE STRUCTURE

The current Territory Plan lists sixteen land use policies areas (zones), as shown in Table 1 below.

Table 1: Land use policy areas (zones) in the current Territory Plan

| Code | Land use 'zone' |
|---|---|
| B1 | Residential |
| B2 | Commercial |
| B3 | Industrial |
| B4 | Community facility |
| B5 | Restricted access recreation |
| B6 | Water features |
| B7 | Municipal services |
| B8 | Entertainment accommodation and leisure |
| B9 | Urban open space |
| B10 | Broadacre |
| B11 | Rural |
| B12 | Hills, ridges and buffer areas |
| B13 | River corridors |
| B14 | Mountains and bushland |
| B15 | Plantation forestry |
| B16 | Major roads |

Each zone contains a set of objectives, a table of permissible uses, and planning rules. Residential areas, for example, are affected by ten objectives, a table of permissible uses, and controls. Controls may include plot ratio limits for dual occupancy housing, maximum gross floor area for home business (as an acceptable standard), or specific provisions for suburban areas.

In addition the commercial land use policy is further divided into five separate commercial land use policies, namely:

- Civic centre
- town centres
- group centres
- local centres
- corridors and office sites.

Taking these additional commercial zones into account there is currently a total of twenty-five zones (land use policies areas) in the Territory Plan.

By contrast, contemporary planning schemes tend to have fewer primary zones. In Victoria, where all planning schemes are based on a standard template, six primary zones are employed. Similarly the NSW Model Local Environmental Plan also suggests six primary zones, as follows:

- business
- industry
- infrastructure, services and facilities
- living
- rural
- environmental protection.

This paper proposes that a further study be undertaken to examine the appropriate number of primary zones and precincts, and review the overlay provisions currently found in Part C of the Territory Plan.

## 5.2 Precincts (area specific policies)

*Recommendation:*

- *That precinct codes incorporate statements of desired character for selected localities and that they be recognised as matters for consideration in the assessment of development applications.*

**TERMINOLOGY**

The Territory Plan currently uses the term 'area specific policies' to describe what this paper proposes to call precincts.

In residential areas, for example, there are currently twenty-five area specific policies, which distinguish between largely single residential areas (suburban areas), residential core

(A10) areas, medium-density residential (B1, B11, B12) and higher-density residential (B13).

Area specific policies already apply to some precincts—namely, commercial, industrial, and entertainment, accommodation and leisure areas. Each precinct is affected by specific policies comprising objectives, permissible land uses and controls. They are similar in form and application to area specific policies, but generally have a wider geographic application. For example, the provisions for precinct 'a' for group centres apply across all group centres rather than being confined to one particular area. An example of the provisions associated with one such area specific policy for commercial areas is in Figure 2.

Area specific policies apply to most other areas covered by the plan. An example of the provisions associated with one such area specific policy for residential areas is in Figure 3.

Figure 2: Example of an area specific policy for a commercial area

*4.1 Precinct 'a'' – Retail Core*

*Primary Purpose*

*To consolidate the major retail and service facilities of the centre within a convenient, safe and attractive pedestrian area.*

*Controls*

*a) Plot Ratio*

*Dickson*

*In Dickson Precinct 'a', the performance control on maximum plot ratio at clause 3.8 does not apply.*

*Macquarie Section 50*

*In Macquarie (Jamison) Section 50, the acceptable standard for maximum plot ratio is 2:1*

*b) Shop size*

*Kingston Section 22 Blocks 21, 25–33*

*The maximum shop size permitted is 300m$^2$.*

*c) Building Height*

*Macquarie Section 50*

*The maximum height of any building on Macquarie (Jamison) Section 50 shall be 4 storeys or 15m above ground level, whichever is greater.*

Figure 3: Example of an area specific policy for a residential area

*Area B11 Urban Housing (generally three storeys)*

*Objectives*

*a) to provide opportunities for significantly increased dwelling densities in residential areas with immediate proximity to transport corridors, commercial areas and employment centres; and*

*b) to provide certainty for the staging of redevelopment in inner North Canberra and promote orderly and integrated development.*

*Controls*

*a) Land Use*
*Add to Schedule 1: Business agency, Office, Restaurant, Shop.*

*b) Land Use Restrictions*
*Business agency, Office, Restaurant, Shop*
*May only be permitted where:*
*– the gross floor area for these purposes in any section does not exceed 100m$^2$ in total;*
*– the business agency, office, restaurant or shop is part of an integrated mixed use development that includes multi-unit housing; and*
*– on approval of the subject development the proportion of the total land area of the section that has been approved for multi-unit housing including dual occupancy is not less than 75% unless otherwise specified in an approved Section Master Plan.*

*c) Building Height*
*The maximum height of buildings shall be 12 metres and no more than 3 storeys except as provided for below.*

*d) Plot Ratio*
*The maximum plot ratio shall be 0.8 except as provided for below.*

*e) Section Master Plans*
*The Authority may from time to time prepare Section Master Plans to assist in guiding residential redevelopment on land subject to this Area Specific Policy. Where a Section Master Plan approved by the Authority identifies additional and not inconsistent requirements to those specified in the Urban Housing Code at Appendix III.3, residential redevelopment for multi-unit housing shall be in accordance with those provisions of the Section Master Plan. For the purposes of this clause, a requirement in a Section Master Plan that is greater than a minimum or is less than a maximum requirement prescribed in the Territory Plan shall not be deemed to be inconsistent with the Code.*

*f) Design and Siting*
*Development of Multi-dwelling housing shall be in accordance with the Urban Housing Code at Appendix III.3.*

*g) Inner North Canberra Development Staging*
*For the B11 areas north of Macarthur and Wakefield Avenues, the maximum height of buildings shall be 2 storeys and the maximum plot ratio shall be 0.65, until 23.5ha of residential blocks in the B11 areas south of Macarthur and Wakefield Avenues have been developed for multi-unit housing, including dual occupancy.*

*h) Application*
*This Area Specific Policy does not apply in relation to any application under the Land (Planning and Environment) Act 1991, which was lodged prior to 16 May 1997.*

**DESIRABLE NUMBER OF PRECINCTS**

As a general rule, most jurisdictions have between seventeen and twenty-six zones and precincts (or a local equivalent).

If the revised Territory Plan uses a smaller number of zones, it is likely that a strong case for additional precincts will emerge to adequately manage land use development in the

Territory. For example, if one primary 'rural zone' is adopted, as many as six precincts may be required to maintain each distinctive set of provisions. Alternatively, if all the current zones are retained then no more precincts will be needed. Either way, zones (land use policies areas) and precincts (area specific policies areas) should be amalgamated where no significant distinction between them is evident.

## 5.3 Development tables

*Recommendation:*

- *That development tables in the Territory Plan list development under five tracks—'exempt', 'code assessable', 'merit assessable', 'impact assessable', and 'prohibited'.*

The five proposed tracks for development tables (as illustrated in Table 2) are generally consistent with the Leading Practice Model for Development Assessment devised by the Development Assessment Forum (see Appendix E).

Table 2: A hypothetical example of a residential development table

| Development Tracks (applicable to development other than variations to Crown leases) | | | | |
|---|---|---|---|---|
| Exempt | Code assessable | Merit assessable | Impact assessable | Prohibited |
| development specified in the regulation or by definition | permitted development that complies with all performance measures | permitted development that is neither exempt, code assessable, or impact assessable | permitted development that requires an environmental impact statement to be lodged with the respective development application | development that is neither permitted nor exempt |

**EXEMPT**

Under the 'exempt' track would be a list (or a reference to a list) of development that is exempt from requiring development approval under the Land Act. Such development is currently referred to in section 40 and listed in Schedule 1 to the Land Regulation. The list includes most internal alterations to buildings, landscaping works in residential areas, certain minor works by or on behalf of the Territory, letterboxes, exterior painting of a dwelling, among many others.

It is proposed to at least make reference to exempt development in the Plan, rather than relying on the user's awareness of the Land Regulation. This would be supported by information pamphlets published by the Authority.

**CODE ASSESSABLE**

An application for development (other than applications for a variation to a Crown lease) that is permitted under a Crown lease, would fall under the code assessable track if it fully complies with all relevant performance measures in the relevant code.

Because there is full compliance with an adopted code the assessment process is simpler and quicker. The related paper, *Technical paper 3 – Streamlining development assessment and building approval processes in the ACT*, recommends that applications in this track are neither subject to notification nor to third party appeals.

**MERIT ASSESSABLE**

An application for development (other than applications for a variation to a Crown lease) that is permitted under a Crown lease and is neither exempt, code assessable nor impact assessable would fall under the merit assessable track. In effect this involves permitted development that is relatively complex and for which at least one departure from a performance measure is proposed. Such applications invariably require professional planning judgement to be exercised and, because at least one departure is contemplated, will also involve public notification and the potential for third party appeals to the Administrative Appeals Tribunal. Further details of this approach are given in *Technical paper 3 – Streamlining development assessment and building approval processes in the ACT.*

**IMPACT ASSESSABLE**

An application for development for which an environmental impact statement is a mandatory requirement (either triggered by a list or by a discretionary decision of the relevant Minister) falls under this track. More details of the related procedures including public participation and appeal rights are given *Technical paper 4 – Review of Environmental impact assessment in the ACT*.

**PROHIBITED**

Development that is neither permitted nor exempt is included in this track.

## 5.4 Use tables

*Recommendations:*

- *That use tables in the Territory Plan list uses under 'permissible', 'permissible only with impact assessment', and 'prohibited'.*
- *Give the Authority the power to approve variations to Crown leases (as development applications) for uses listed as 'permissible only after impact assessment' under the Territory Plan, but only after rigorous impact assessment.*

Currently under the Territory Plan each zone has a table of permissible uses. For leased Territory land, these tables serve no function in the assessment of development applications for the erection of buildings or structures.

For unleased Territory land these tables take on a slightly different function. In these cases 'permissible' use tables act as surrogate lease purpose clauses and so become 'permitted' uses.

From a user's perspective the current approach of listing permissible use is simple, and is able to answer the basic question:

> *Can my proposed use be added to my Crown lease purpose clause?*

In most cases the user can immediately pinpoint a use that matches the proposal in the relevant table, for example a motel or a shop. This can then be confirmed by reference to the definitions in Part D. This approach is also consistent with s.7 of the Land Act, which lists the matters that may be included in the Territory Plan, including a requirement to *specify purposes for which land may be used*. Listing permissible development is rather more in keeping with this provision than listing prohibited uses.

Listing prohibited uses would be an effective alternative but does not answer the key question in a direct way. As a result the user will invariably need to consult the definitions to determine whether a particular use is permissible.

A better alternative is to list uses and development under 'exempt', 'permissible', 'permissible only after impact assessment', and 'prohibited'. Uses under 'permissible only after impact assessment' would ordinarily not be specifically listed. Instead there will be a reference to uses not listed in one of the other three categories, and would include innominate uses (uses that are not adequately defined by current definitions).

As the name suggests, use tables (as illustrated by Table 3) are concerned with use, chiefly by specifying the uses that can be added to Crown lease purpose clauses.

Table 3: A hypothetical example of a residential permissible uses table

| Permissible Uses<br>applicable to the granting of Crown leases and applications for variations to Crown leases | | |
|---|---|---|
| **Permissible** | **Permissible only after impact assessment** | **Prohibited** |
| ancillary development | use that is neither exempt, permissible nor prohibited | airport |
| boarding house | | correction facility |
| child care centre | | drinking establishment |
| community activity centre | | drive-in cinema |
| guest house | | freight transport facility |
| habitable suite | | general industry |
| health facility | | hazardous industry |
| home business | | hazardous waste facility |
| home occupation | | incineration facility |
| minor use | | industrial trades |
| multi-unit housing | | liquid fuel depot |
| parkland | | major utility |
| relocatable unit | | installation |
| single dwelling housing | | mint |
| special dwelling | | offensive industry |
| residential care accommodation | | plant and equipment hire |
| supportive housing | | establishment |
| temporary use | | plantation forestry |
| | | produce market |
| | | railway use |
| | | recycling facility |
| | | stock sale yard |
| | | transport depot |
| | | treatment plant |
| | | vehicle sales |
| | | veterinary hospital |
| | | zoological facility |

Note: this table is provided for illustration purposes only. It should not be taken as the Authority's preferred development table for residential zones.

**PERMISSIBLE**

A development application for a variation to the purpose clause of a Crown lease is first tested against the list of permissible uses found in the Plan. If the use is permissible, a further assessment is undertaken to determine whether the addition of such a use is consistent with the Plan. Such matters as adequacy of the land or buildings on the land to accommodate the proposed use, the relationship of that use with surrounding uses, the adequacy of infrastructure, among other things is taken into account. It is always possible that an application for a permissible use can be denied by the Authority on planning grounds.

**PERMISSIBLE ONLY AFTER IMPACT ASSESSMENT**

This category refers to uses that are neither permissible nor prohibited. If the associated recommendation is adopted, such a use can be added to a Crown lease and so become a permitted use, but only after the lodgement of a development application and rigorous environmental assessment through an environmental impact statement. Such a statement would ordinarily be prepared by a consultant selected by the Authority at the applicant's expense, and address the issues determined by the Authority during the environmental impact statement scoping process (as outlined in *Technical paper 4 – Review of Environmental impact assessment in the ACT*).

This approach seeks to respond to perceived difficulties with the current approach, which is to vary the Territory Plan to allow additional permissible uses for a particular parcel or group of parcels. An example of such a variation is found in Figure 4 below, where the Territory Plan was varied to add community use and shop to the list of permissible uses applicable to the Banks local centre.

Figure 4: Example of a variation to the Territory Plan to add a use

*Area A5: Banks Local Centre*

*Controls*
*a) Land use*
*Add to Schedule 1:*
*• COMMUNITY USE, Shop.*

A similar mechanism is used in South Australia. Development plans (local planning instruments) list non-complying development that, although not encouraged in a particular zone, can be approved but only if the local council and the Development Assessment Commission (established under the *Development Act 1993*) agree.

**PROHIBITED**

Use that is prohibited under the Territory Plan cannot be included in a Crown lease as a permitted use.

## 5.5 Future urban land (defined land)

*Recommendations:*

- *Use the term 'future urban' zone instead of the term 'defined land'.*
- *Identify future urban zones (defined land) on the map using a distinctive single colour.*
- *The associated principles and policies for future urban zones (defined land), together with any associated maps, should be made readily available to the public through on-line and traditional means.*
- *Undertake a separate study into the options for the review and updating of principles and policies for future urban zones (defined land) as and when appropriate.*
- *Principles and policies for future urban zones (defined land) should be added to the matters for the consideration of development applications for estate development plans.*

Defined land is land that is set aside for future suburbs or other development. It becomes defined through a variation to the Plan.

The land is 'undefined' separately, when an estate development plan is approved, and before the land is released for sale and development.

The term 'defined land' really refers to land that many people would call a future urban zone, and this change in terminology is recommended.

**DEFINING LAND**

When land is defined, principles and policies for its development must also be specified at the same time. Ordinarily these are found in documents accompanying the Plan variation. Defined land is currently depicted on the map by a red line at its edge and the code 'D'.

The identification of new suburbs in Gungahlin is a recent example. Under variation to the Territory Plan No.130 a large area of northern Gungahlin was identified for future urban development. Principles and policies for development, including a map showing the likely pattern of future development, were produced for each proposed suburb. Appendix C contains principles and policies for the suburb of Bonner, as taken from variation No.130.

Currently possible land use policies applying to defined land are shown on the map. This can be quite misleading, because the final pattern of zones could well be significantly different. Future residents might, for example, expect urban open space adjoining a residential area by reference to the map, only to find that it is earmarked for a school following the 'undefining' process. To avoid this problem it is recommended that future urban zones (defined land) be identified on the map by a distinctive single colour and that the associated principles and policies for development, together with any associated maps, should be made readily available to the public.

The currency and relevance of adopted principles and policies for future urban zones can also be an issue if the development takes some time to complete. For example, the

principles and policies for future urban zones in large new release areas (such as Gungahlin) could well be more than 20 years old by the time they are actually invoked. Currently the only mechanism available to alter principles and policies is a variation to the Territory Plan. Depending on the nature of the changes, this might be an unnecessarily complex and time-consuming approach. It will therefore be recommended that a separate study be undertaken into the options for the review and updating of principles and policies for future urban zones as and when appropriate.

The process of defining land is often subject to environmental impact assessment through the preparation of a preliminary assessment. Public comment is invited on the preliminary assessment ordinarily in conjunction with the release of the draft variation to the Plan that is the vehicle for defining the land. Environmental impact assessment associated with draft variations to the Territory Plan is addressed in *Technical paper 4 – Review of Environmental impact assessment in the ACT*.

**UNDEFINING LAND**

Apart from subdivision, defined land cannot be developed until it is undefined through a process set out in subdivision 2.3.4 of the Land Act. Section 32 obliges the Authority to vary the Territory Plan following its approval of the subdivision of any parcel of defined land. Such a variation follows a much simpler path than other variations. There is no public notification, and the Legislative Assembly is not involved. Instead the Chief Planning Executive of the Authority needs only to endorse a notifiable instrument describing the variation. This notice is subsequently published in the Legislation Register and a notice to the same effect in *The Canberra Times*.

Under s.32 of the Land Act the undefining variation must be consistent with:

- the relevant subdivision and any conditions of approval
- the principles and policies previously specified.

It must also show the purposes for which the identified parts of that land may be used. In practice this means that an estate development plan is prepared, showing land use policies (zones) and where appropriate, area specific policies. These then become part of the Territory Plan. The defined land principles and policies cease to have effect.

In practice the process of undefining land begins with a series of non-statutory planning steps. This is an iterative process that refines estate design from the fairly broad principles and policies to quite detailed estate development plans that are formally assessed by the Authority as development applications. The intermediate process typically involves preparing a range of plans including structure plans and concept plans. Informal public consultation is often undertaken, ranging from public meetings to walks around the proposed estate.

The process of defining then undefining land has the major advantage of deferring the precise allocation of land use policies (zones) and the invocation of the provisions of the Plan until the subdivision layout is finalised. In theory no development application, other

than an estate development plan (for subdivision), should be submitted to the Authority on a parcel of defined land. For this reason the defined land principles and policies have no role in the assessment of a development application. Instead, the normal provisions of the Plan relating to the land use policy (zone) assigned after the undefining process will prevail.

**ESTATE DEVELOPMENT PLANS**

Estate development plans and associated documents are defined in Part D of the Territory Plan:

> *Estate development plan means a plan setting out the proposed pattern of subdivision and infrastructure works for an estate, and which is required to be approved prior to the undertaking of the works and the granting of leases for the subdivided blocks and may include a streetscape concept plan and/or a building envelope plan.*
>
> *Building envelope plan means a plan relating to blocks in an estate specifying envelopes within which buildings will be required to be constructed along with any other specific block development controls and which is linked to and approved along with the estate development plan*
>
> *Streetscape concept plan means a plan of the proposed streetscape, which is linked to and approved along with the estate development plan for the area.*

An estate development plan is essentially a plan of proposed subdivision that is lodged with the Authority for development approval. The land concerned is typically, though not necessarily, defined land.

Once development approval is given, a process is commenced leading to the issue of Crown leases (either as individual leases or a holding lease over a larger area).

An estate development plan is the only type of development application for defined land contemplated by the Plan and the Land Act. Other types of development proposals are not ordinarily lodged until the land use policies for a particular area are finalised through the undefining process. Despite its unusual status there is little clear direction in either the Territory Plan or the Land Act as to how an estate development plan is to be determined. Part A3 section 6 of the Plan provides some limited guidance:

To overcome this uncertainty, principles and policies for defined land should be added to the matters for consideration currently contained in Part A3 section 9 of the Plan. It should be made clear that such principles and policies apply to the consideration of estate development plans only.

# 6. The Map

The Territory Plan Map shows how the various principles and policies contained in the written statement apply to different areas within the ACT. The Map identifies:

- Land Use Policies—indicated by different colours on the map
- Overlay Provisions—indicated generally by distinctive bordering and overlay codes.

An example of a current Territory Plan Map is given in the figure below.

Figure 5: A typical Territory Plan map

Maps incorporating all previous amendments (including defined land variations) are produced by the Authority in paper form every six months or so. These are distributed to government agencies, including the Authority (for reference) and the Administrative Appeals Tribunal. Maps are also made available to the public. In addition to regular updates, paper maps are produced to order. Maps are accurate only on the day of printing.

Maps will always be an important part of the Territory Plan and they will not change much under the proposed reforms. Some urban zones may be amalgamated and the future urban zone (currently defined land) may be represented by a single colour. Changes to precincts (including area specific policies) will also result in minor mapping changes.

The Plan's maps are accessible by the public on-line. The issue of currency of these maps is addressed in section 8.2 of this paper.

# 7. Planning rules and codes

For the purposes of this paper planning rules refer to a wide range of provisions found in planning schemes and related planning documents. They are commonly referred to as planning provisions or planning controls and cover such matters as building height, density controls, boundary setbacks, sunlight access controls, exterior material selection, among many others.

In the ACT planning rules are found in a number of separate but often related documents:

- controls in the Territory Plan written statement
- codes in the Territory Plan (Appendices III.1, III.2 and III.3)
- planning guidelines
- master plans (including section master plans)
- neighbourhood plans (when adopted as planning guidelines)
- community value statements
- National Capital Plan.

All planning rules have a specified status, a level of discretion that can be applied, and a process for amendment, as described below:

- Status—a measure of how seriously it is to be treated. A mandatory rule has a higher status than one that can be effectively set aside, albeit only after 'careful consideration'. For example, planning rules (including guidelines) need only to be carefully considered when development applications are being assessed. In contrast, a development cannot be inconsistent with most rules found in the land use policies in Part B of the Territory Plan.
- Discretion—generally planning rules with higher status allow decision-makers less discretion. Conversely, decision-makers have more discretion in relation to planning rules with a lesser status.
  For example, rules governing residential plot ratios are mandatory and not subject to discretion, while limited discretion is available to certain other controls (through clauses 11.2 and 11.3 of Part A3). Much wider discretion is generally available for rules contained in planning guidelines, for example, as they have only to be given 'careful consideration'. Provided they have been considered in this way, the implication is that they can then be ignored, although this is not common practice.
- Amendment—planning rules contained in the Territory Plan, such as the Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2) and the various controls applicable to land use policies areas and area specific policies can only be amended through a variation to the Territory Plan. By contrast, planning guidelines can be adopted, amended or revoked by the Authority at any time, and prior public consultation is not required. Master plans ordinarily require a period of public consultation before adoption or amendment by the Authority.

## 7.1 Proposed changes to planning rules

**LOCATION OF PLANNING RULES**

*Recommendations:*

- *Planning rules should be retained in the Territory Plan written statement only if they:*
  - *relate to the permissibility of uses*
  - *are fundamental to the distinction between sub-zones (area specific policies areas)*
  - *mirror provisions of the National Capital Plan.*
- *Transfer planning rules taken from the written statement into codes or planning guidelines.*

An examination of current planning schemes in Australasia discloses two quite distinct approaches to the location of planning rules. On the one hand, development plans in South Australia and the Wellington City District Plan (New Zealand), for example, include planning rules in the body of the document. On the other hand, plans in NSW make reference to rules found in other documents that are typically prepared and adopted by local councils.

This question is likely to be irrelevant to users, who increasingly are using the internet to discover the planning rules for a particular proposal on a particular parcel of land. Many unsold copies of the Territory Plan are testament to this trend. Even so, the paper version of the Territory Plan will continue in some form for the foreseeable future. This means a decision needs to be made on the location of the related planning rules, with the goal of simplifying the written statement.

The first of three options is to retain in the Territory Plan only those planning rules with a mandatory application. In this context a rule with mandatory application requires that a proposal cannot be approved if it is inconsistent with the rule. The rules currently contained in Appendix III to the Territory Plan are of this sort.

The second option is to include all planning rules in the Territory Plan. This has the advantage of locating all pertinent planning rules in a single document, but requires a variation to the Plan to modify a particular rule.

The third and favoured option is to strip most rules from the Territory Plan written statement except where they:

- relate to the permissibility of uses
- are fundamental to the distinction between sub-zones (area specific policies areas)
- mirror provisions of the National Capital Plan.

Rules taken from the written statement could be transferred into codes or planning guidelines in accordance with their status.

**STATUS, DISCRETION AND AMENDMENT**

*Recommendation:*

- *Prepare a series of templates for documents containing planning rules to achieve a consistency in form and content with particular emphasis on how performance measures are to be applied, statements of introduction and citation, and the formatting of provisions to be acceptable for inclusion in electronic assessment documents.*

The status, discretion and amendment process attached to planning rules are usually specified in the introduction to the relevant documents. Such advice should be provided clearly and consistently. This means that each document containing planning rules should have a standard introduction and format. The design and layout of these documents should also facilitate their use as an electronic development assessment tool.

Mechanisms for amendment, including any public participation and identification of the approving authority, should also be clearly stated. A series of templates can assist in achieving this level of consistency and disclosure.

**SEPARATE REVIEW OF PLANNING RULES**

*Recommendation:*

- *That a separate, comprehensive review of planning rules be undertaken, and that each rule be appraised against current leading national practice.*

There is a widely held view that all planning rules associated with the Territory Plan should be critically reviewed to overcome conflict and inconsistency. Such a review has a broad reference and it is beyond the scope of this discussion paper. A separate, comprehensive review of planning rules in relation to leading practice should therefore be undertaken in the near future.

## 7.2 Codes

*Recommendation:*

- *That codes and planning guidelines become the primary subsidiary documents for the purposes of development assessment.*

The primary role of codes is in the assessment of development applications. Currently the Plan contains three codes in its Appendix III. They are all residential codes, as follows:

- Residential Design and Siting Code for Single Dwellings
- Residential Design and Siting Code for Multi-Dwelling Developments
- Urban Housing Code

Whilst the Territory Plan provides that the Authority shall not approve a development proposal in a residential area *that would be inconsistent with…the relevant provisions of any Residential Code at Appendix III* (Part A3 clause 9.1) the Authority has a certain amount of discretion to allow for departures provided that the relevant performance criteria and

objectives are met. For example a departure from a side boundary setback provision may be acceptable if it can be demonstrated that the amenity of adjoining lessees is not jeopardised.

Two of these codes—the Residential Design and Siting Code for Multi-Dwelling Developments and the Urban Housing Code—set out planning rules for essentially the same type of development, namely multi-unit housing. However, a proposal for three-storey apartment buildings in the Residential B1 zone is affected by the former, while an identical proposal in the Residential B11 zone is affected by the latter. There appears to be no justification on planning grounds for this dual approach. As part of the recommended review of planning rules the prospect of amalgamating these documents should be explored.

### NUMBER AND STATUS OF CODES

Despite the proposed amalgamation of two of the residential codes, the trend should be towards expanding the number of codes, and to incorporate planning rules currently found in the Plan's written statement, planning guidelines and master plans, as appropriate. Additional codes could be devised for a wide range of development types including, but not restricted to:

- local centres redevelopment code
- high rise apartment code
- industrial code
- signs code
- precinct codes (as discussed below).

Codes should continue to be the primary home of planning rules under the Plan. Furthermore, the current status of codes in relation to their role in development assessment, the application of discretion, and the process of amendment (by way of a variation to the Plan) should be retained.

Amendments to the residential codes are treated as amendments to the Territory Plan and are therefore regulated under Part 2 of the Land Act. This enhances the status of the codes, but does not allow for quick amendment.

Codes may also contain provisions of a planning nature that are notionally the responsibility of other government agencies. For example, a multi-unit housing code could contain provisions for the management of recurrent waste. At present these provisions are found in a document prepared the ACT Department of Urban Services and adopted as a planning guideline by the Authority. If incorporated into a code, such provisions would have a higher status compared to their status under a planning guideline.

### PRECINCT CODES—TO SPECIFY LOCAL CHARACTER

A challenge for any planning system is to identify the desired character and development patterns for particular localities, and then assess development applications accordingly. Developing a set of precinct codes would allow this. They would be based on defined land

principles and policies, lease and development conditions, and relevant section master plans and neighbourhood plans, and would be adopted only after public consultation.

Identifying precinct codes would also allow everyone to distinguish between residential areas with quite different future characters, even if some of the twenty-four residential sub-zones are amalgamated. For example, a distinction between low, medium and high-density residential areas could (and should) be maintained in this way.

## 7.3 Planning guidelines and other subsidiary documents

*Recommendations:*

- *Provisions for the amendment of planning guidelines should be formulated and transferred to the Land Act with the provisions affecting planning guidelines contained in Part A3 section 7 of the Territory Plan.*

The focus of this section is on recommendations for the subsidiary documents with a role in development assessment that are prepared or approved by the Authority. It will also address community value statements. These recommendations are designed to address the issues outlined above, or to suggest further examination.

The documents of interest are:

- planning guidelines
- master plans
- neighbourhood plans
- lease and development conditions
- community value statements

A number of documents with a planning purpose are referenced in the Territory Plan. Most are required to be taken into account by the Authority during development assessment. Table 4 summarises the functions of these documents.

In addition to the documents listed in Table 4, implementation plans and group development schemes are cited in the design and siting provisions of Appendices III.1 and III.2 alongside lease and development conditions. Implementation plans and group development schemes are no longer relevant.

Subsidiary documents prepared or approved by the Authority, as well as community value statements, are described in more detail below.

The heritage places register was part of the Plan until 9 March 2005 when the *Heritage Act 2004* came into force.

Table 4: Subsidiary documents

| Document | Specific Land Act references | Territory Plan reference | Considered in DA assessment? | Prepared by | Approved by |
|---|---|---|---|---|---|
| Planning guidelines | nil | Part A3, section 8 | Yes, must be carefully considered | the Authority | the Authority |
| Master plans (including section master plans) | nil | Part A3, section 7 and clause 9.2 | Yes, must be carefully considered | the Authority | the Authority |
| Neighbour-hood plans | nil | nil | Yes, must be carefully considered (but only when listed on the register of planning guidelines) | the Authority | the Authority |
| Lease and development conditions | s.227 | Part A3 clause 9.3 Design and siting provisions in Appendices III.1 and III.2 | Yes, must be carefully considered | Land Development Agency | the Authority |
| Plans of management for public land | Part 5 | Part A3 clause 9.1 | Yes, a development proposal cannot be inconsistent with an approved plan of management | Conservator of Flora and Fauna | the Minister for the Environment |
| Community value statements | nil | Part A3, clauses 9.3 and 13.2 | Yes, must be carefully considered | a community group | the Minister for Planning |

### 7.3.1 Planning guidelines

A planning guideline is any map, code or other document that the Authority uses officially when assessing development applications.

Planning guidelines have a particular role to play as subsidiary documents to the Plan. Although they do not have the status of codes, they must still be carefully considered in the assessment of development proposals (Part A3 clause 9.2 of the Plan). The advantage is that guidelines can be rapidly adopted, with immediate effect. In this way they are capable of responding quickly to emerging planning issues.

Planning guidelines may be produced by the Authority or another Territory agency.

## STATUS

Planning guidelines are given status by the Territory Plan, specifically when they are listed in the register of planning guidelines, as required under clause 8.1 of Part A3. A planning guideline is adopted as an interim guideline after it is endorsed by the Chief Planning Executive of the Authority. The guideline is formally adopted only after appropriate community consultation, as determined by the Authority. If it is not adopted the interim guideline will lapse after twelve months.

In an effort to rationalise the roles and status of the various documents subsidiary to the Territory Plan, it is recommended that planning guidelines be given primacy over other subsidiary documents, namely master plans and neighbourhood plans (should they continue).

Examples of current planning guidelines entered on the register are:

- ACT Crime Prevention and Urban Design Resource Manual, 2000
- Energy Guidelines, 1993
- ACT Parking And Vehicular Access Guidelines, October 2000
- Development Control Code for Best Practice Waste Management in the ACT, Sept 1999
- On-site Stormwater Detention (OSD) Policy, Oct 1996
- Belconnen Town Centre Master Plan, August 2001
- Section Master Plan Braddon Sections 1, 2, 5, 6 and 9
- Dickson Neighbourhood Plan.

Section 8 of Part A3 of the Plan makes no provision for the amendment of planning guidelines other than removing it from the register, thus rendering it inactive. Such provisions should be introduced in conjunction with the proposed migration of the provisions contained in Part A3 s.7 to the Land Act or its regulation.

## CONTENT AND LOCATION

Current planning guidelines contain planning rules that may be more appropriately located in codes. For example, many planning rules currently found in the ACT planning guidelines for access and mobility actually relate to residential development, so they should be located in the relevant residential code. Determining which rule should be transferred into a code should be informed by an assessment of its status. In the case of access and mobility rules, there is a strong argument that accessibility for people with disabilities is at least as important in a planning context than side boundary setback provisions already found in residential codes.

### 7.3.2 Master plans

*Recommendations:*

- *Master plans cease to be matters for consideration in development assessment. Master plans should continue to be a vehicle for the development of policy with community consultation, but their role should be confined to providing recommendations for variations to the Territory Plan, codes or for new or revised planning guidelines.*

Master plans allow for detailed planning of an area—for example, a town centre (Belconnen town centre is a recent case in point), a group centre (Jamison is a recent example), or a local centre. When they cover one or more cadastral sections, such as with the inner north Canberra suburbs of Braddon, Lyneham, O'Connor and Turner, they are called section master plans.

Master plans are prepared and approved by the Authority under Section 7 of Part A3 of the Plan. They are not referred to in the Land Act or its regulation.

**STATUS**

Master plans have much the same status as guidelines because they are entered onto the register of planning guidelines once they are approved (s.7 of Part A3 of the Territory Plan). In practice, master plans have a greater status than planning guidelines, mainly because of a more rigorous public consultation process. This effectively lends more status to master plans than is implied from Part A3 clause 9.2 of the Territory Plan, which states only that in considering development proposals, the Authority shall carefully consider any approved master plan applying to the land.

A master plan may be given additional status through a particular provision of the Territory Plan. This is currently restricted to the Residential B11 and Residential B12 areas of North Canberra. In these cases the Plan provides that:

> *The Authority may from time to time prepare Section Master Plans to assist in guiding residential redevelopment on land subject to this Area Specific Policy. Where a Section Master Plan approved by the Authority identifies additional and not inconsistent requirements to those specified in the Urban Housing Code at Appendix III.3, residential redevelopment for multi-unit housing shall be in accordance with those provisions of the Section Master Plan. For the purposes of this clause, a requirement in a Section Master Plan that is greater than a minimum or is less than a maximum requirement prescribed in the Territory Plan shall not be deemed to be inconsistent with the Code.*

This text also reinforces the primacy of the Territory Plan over master plans.

The term master plan is problematic in that it covers a number of loosely related documents and the issues addressed therein range from broad vision statements (e.g. broad statements about the intended range of uses, such as in the Woden master plan) to detailed

development controls (e.g. in a section master plan). Certain master plans contain both elements, but they are not clearly separated.

In addition, there are certain master plans that have limited status, such as the Braddon Master Plan that was developed as a consequence of the Braddon Neighbourhood Plan. Other master plans such as the Belconnen Markets Master Plan are not Authority documents, and thus have no role or status in development assessment.

It is also clear that neighbourhood plans themselves, despite their formulation under a different process, are comparable to master plans in that they are broad vision statements. Their placement in a separate category of strategic plans is confusing.

The current Territory Plan makes no provision for variations to or revocation of master plans, other than provision for correcting a formal error (a minor mistake in the text) or a minor amendment. This can be remedied by making conjunction with the proposed migration of the provisions contained in Part A3 section 8 to the Land Act or its regulation.

**CONTENT AND LOCATION**

In common with planning guidelines, master plans and section master plans contain planning rules that may be more appropriately located in codes or in planning guidelines. Current master plans should be reviewed to determine whether their planning rules would be better located in codes or planning guidelines.

The formulation of master plans should continue as a legitimate planning tool, but they should not be taken into account in the development assessment process. Instead, master plans should specify variations to the Territory Plan, code, or planning guidelines that will, in turn, be considered in the development assessment process.

This approach is consistent with a recommendation that codes and planning guidelines be given primacy over other subsidiary documents.

### 7.3.3 Neighbourhood plans

*Recommendation:*

- *Neighbourhood plans cease to be matters for consideration in development assessment. Neighbourhood plans should continue to be a vehicle for the development of policy at a local level with community consultation, but their role should be confined to providing recommendations for variations to the Territory Plan, codes or for new or revised planning guidelines.*

According to the appendix to the Dickson Neighbourhood Plan:

> *A Neighbourhood Plan is a document that provides direction for a neighbourhood and the strategies required to create that future.*

Unlike other subsidiary documents the primary role of a neighbourhood plan is to identify agreed planning outcomes for a particular suburb. In this sense it is akin to a statement or a series of statements of desired character—representing how the suburb might look in 15 years time. Its role as a tool for development assessment is a secondary one.

The neighbourhood planning process commenced in 2002. To date, the process has targeted suburbs that have experienced most redevelopment pressure over recent years—Braddon, Deakin, Dickson, Forrest, Griffith, Narrabundah and Red Hill, Garran, Hughes and Yarralumla; Lyneham; O'Connor; Turner; Watson, Downer and Hackett.

**STATUS**

Neighbourhood plans have no status in their own right, either under the Territory Plan or the Land Act, and there is no statutory provision for their amendment. However, neighbourhood plans are normally listed on the register of planning guidelines. In this way they are required to be considered in the assessment of development applications.

As is the case for master plans (discussed above), neighbourhood plans should not be taken into account in the development assessment process. Instead, neighbourhood plans should specify variations to the Territory Plan, code, or planning guidelines that will, in turn, be considered in the development assessment process.

Neighbourhood plans should continue to play a role in the formulation of planning policy at a local level, not least because they have proven to be an effective vehicle for community engagement.

This approach is consistent with a recommendation that codes and planning guidelines be given primacy over other subsidiary documents.

### 7.3.4 Lease and development conditions

*Recommendations:*

- *Delete the references to lease and development conditions from Residential Design and Siting Code for Single Dwellings (Appendix III.1) and Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2).*

Lease and development conditions are ordinarily prepared by the Land Development Agency and endorsed by the Authority before a parcel of land is offered for sale (through the offer of a Crown lease).

As the name suggests, lease and development conditions contain two quite distinct components:

- lease conditions
- development conditions.

Lease conditions disclose to prospective purchasers the matters that are likely to be included in a Crown lease prepared at the time of purchase. Development conditions give

purchasers advanced notice of conditions that are likely to be imposed in any future development approval. They often refer to attached planning control plans for matters such as preferred locations for vehicular access, required fencing types, trees to be retained, and boundary setbacks.

In certain instances, lease and development conditions effectively become part of the Territory Plan. For example, boundary setback provisions contained in lease and development conditions override similar provisions in the Plan for residential development proposals affected by Residential Design and Siting Code for Single Dwellings (Appendix III.1) or Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2).

The chief concern over this approach is its lack of accountability and transparency. Lease and development conditions are prepared without statutory guidance, and are not ordinarily subject to public scrutiny.

Despite the requirement under s.227 of the Land Act—that they be listed in the public register—the level of effective public disclosure is minimal. Without particular knowledge of the applicable lease and development conditions, a neighbouring lessee is likely to assume that any house on the adjoining block will be erected with not less than the setback specified in the Residential Design and Siting Code for Single Dwellings. Under the applicable lease and development conditions, however, the relevant setback could be significantly less than specified in the code, with zero setbacks not uncommon.

In response to these concerns, two remedial options are proposed, in addition to the option of maintaining the status quo.

#### Option 1—lease and development conditions override planning rules in the Territory Plan

This option could be adopted if the process were changed to allow for public consultation and effective disclosure. The issue of the level of public involvement is examined in *Technical paper 4 – Review of Environmental impact assessment in the ACT*. Effective disclosure remains an issue and is the major weakness of this approach. No effective remedy is currently apparent.

#### Option 2—lease and development conditions no longer override planning rules in the Territory Plan

This option is the preferred option. It can be implemented by deleting the relevant references from Residential Design and Siting Code for Single Dwellings (Appendix III.1) and Residential Design and Siting Code for Multi-Dwelling Developments (Appendix III.2). This will require the amendment of the relevant design and siting codes or the adoption of a new code applying to a particular area to introduce less onerous planning rules for that area. Currently a Territory Plan variation is the mechanism for changes of this sort.

### 7.3.5 Community value statements

*Recommendation:*

- *That the current role and status of community value statements be separately reviewed, including the option that they be given renewed status in local policy development.*

Provision is made for community value statements in Part A3 clause 13.2 of the Territory Plan:

> *Community Value Statements properly prepared through consultation with local residents and other stakeholders, and submitted for consideration by the Minister, are taken into account in the formulation of draft Territory Plan variations, master plans and planning guidelines, and in the consideration of specific land use and development proposals.*

Once a Community Value Statement achieves a status under the Territory Plan, according to this provision, it must be carefully considered in the determination of any affected development application in accordance with Part A3 clause 9.3.

No new Community Value Statement has been produced for some years. It seems that they have been effectively superseded by neighbourhood plans, although those that are in force must still be considered.

Given their limited application and coverage it is recommended that current Community Value Statements be reviewed separately. Among the options that might be explored in such a review are:

- maintaining the role of community value statements as a mechanism through which the community's views on local desired character are expressed
- abandon community value statements in favour of neighbourhood plans.

In either case these documents should be used to inform amendments to the Plan, codes or planning guidelines that will subsequently be considered in the development assessment process.

## 7.4 Transferring planning rules to codes or planning guidelines

It is a recommendation of this paper that planning rules should only be retained in the Territory Plan written statement if they:

- are fundamental to the distinction between zones and precincts
- mirror provisions of the National Capital Plan.

This raises the prospect of various planning rules being removed from the Territory Plan and the question of where such rules should be located. It is clear that the receiving documents should have statutory recognition. Currently this would limit the options to codes, planning guidelines and master plans.

Some examples are in the next two Figures. The Authority has no discretion to accept departures from the rule in Figure 6, but this and other similar provisions could be transferred to the relevant residential code. This rule could retain its current status in terms of discretion in this code provided it was clearly labelled as a mandatory rule rather than a performance measure. If so labelled, its mandatory status could only be achieved if the code retained its current status in relation to development assessment. Currently an application cannot be approved if it is inconsistent with the code. If this were to be altered to a matter for careful consideration only (as for a planning guideline) its mandatory status could be quickly undermined.

In the case of Figure 7, this and similar provisions could be transferred to either a new Home Business Code with the same status as a residential code, or to a planning guideline.

Figure 6: Example of rules limiting density in suburban areas (clause 3.6(d) of Part B1 of the Plan)

*For dual occupancy housing, the maximum plot ratio of all development on the block shall be as determined by the following formula:*

*P = (140/B + 0.15)100*
*where:*
*P is the maximum permissible plot ratio expressed as a percentage;*
*B is the block area in square metres.*
*Except that for development applications for dual occupancy housing lodged before 30 May 2003, the maximum plot ratio for all development on the land shall be 0.35:1 (35%).*

Figure 7: Example of performance measures for home business in residential areas (from clause 3.2 of Part B1 of the Plan)

*Home business (see also clause 3.1)*

*LAND USE PERFORMANCE CONTROLS*

| *PERFORMANCE CRITERIA* | *ACCEPTABLE STANDARDS* |
|---|---|
| *To protect the amenity of the area by:*<br>• *restricting the agglomeration of non-residential activities; and*<br>• *ensuring that the scale of home businesses is compatible with the residential character of the locality.* | *Maximum of two home businesses per section.*<br><br>*Maximum gross floor area of business (including storage) of 40 m²;*<br><br>*Maximum of three persons (including resident workers) employed on the site; and*<br><br>*Maximum of one commercial vehicle operating from or parked within the site.* |

# 8. Other issues

## 8.1 The Plan variation process

*Recommendations:*

- *Allow the Minister for Planning to decide whether a draft Territory Plan variation is to be referred to the relevant committee, with a further provision that the Legislative Assembly will have the power to direct such referral, subject to disallowance.*
- *The allowable time for the relevant committee of the Legislative Assembly to report on a variation referred to it should be limited through legislation, regulation or some other suitable mechanism.*
- *Consider the range of minor variations to the Territory Plan that can be the subject of an abridged process of preparation, consultation and adoption.*
- *Give the relevant committee of the Legislative Assembly the discretion to decline to report to the Legislative Assembly on a draft variation to the Territory Plan.*

Part 2 of the Land Act sets out the process by which the Plan may be varied. It is an often lengthy process involving community consultation, referral to agencies, scrutiny by a committee of the Legislative Assembly, approval by the Minister for Planning, and the opportunity for disallowance by the Legislative Assembly.

The process is often criticised because it takes so long, even for minor variations. One of the main reasons for delay is the requirement that all draft plan variations, regardless of complexity, must be referred to a committee of the Legislative Assembly, currently the Standing Committee on Planning and Environment. Table 5 gives some examples.

The preferred option is to allow the Minister to decide whether a draft Plan variation is to be referred to the relevant committee, with a further provision that the Legislative Assembly will have the power to direct such referral, subject to disallowance. This will allow minor or non-controversial plan variations to be expedited, whilst retaining the Legislative Assembly's role in significant and controversial variations.

Other alternatives are:

- the draft variation would not be referred unless a related disallowable instrument is invoked by the Legislative Assembly
- empowering the relevant committee itself to make that decision
- identify in legislation the kinds of variations that would (or would not) be referred.

The last option might list variations that have attracted no public submissions or, where submissions have been received, that have been adequately dealt with in the final draft variation.

Whilst it is the recommendation of this paper that the Minister exercise this power, the alternatives warrant further investigation.

If a draft variation is referred to a committee of the Legislative Assembly, the allowable time for that committee to report should be limited through legislation, regulation, or some other suitable mechanism. In addition the committee should be given the discretion, through legislation, to decline to report.

There is also scope for streamlining administrative arrangements, including initial referrals to the Minister's office and referrals to government agencies, both statutory and non-statutory.

Table 5: The time taken by the Standing Committee on Planning and Environment (PEC) to consider and report on a selection of draft variations

| Draft Variation # and description | Date of Submission to Minister for Approval and Referral to PEC | Date Planning and Environment Committee tabled Report | Approximate time with PEC |
|---|---|---|---|
| DV 175 – Industrial Land Use Policies 2002 | 31/10/2002 | 17/4/2003 | ~ 5 ½ months |
| DV 190 – Hannah Park 2002 | 8/7/2002 | 27/8/2002 | ~ 1½ months |
| DV 200 – Residential land use policy modifications etc. 2002 | 17/12/2002 | 30/4/2003 | ~ 4 ½ months |
| DV 202 – Jamison Centre Master Plan 2002 | 13/3/2003 | 14/7/2003 | ~ 4 months |
| DV 206 – Commercial B2C (Group Centres) | 10/2/2003 | 9/5/2003 | ~ 3 months |
| DV 207 – Oaks Estate | 14/2/2003 | 5/6/2003 | ~ 3 ½ months |
| DV 210 – 2/35 and 28/35 Deakin – Commercial E and Residential | 14/4/2003 | 17/6/2003 | ~ 2 months |
| DV 174 – Club Site and Community Facility Land | 3/7/2001 | 14/5/2002 | ~ 10 ½ months |
| DV 182 – Nature Reserve – Yellow Box Red Gum Grassy Woodland | 30/4/2002 | 16/8/2002 | ~ 3 ½ months |
| DV 164 – Community Facility Land | 27/3/2002 | 16/8/2002 | ~ 4 ½ months |
| DV 187 – Heritage Places Register – Red Hill Housing Precinct | 5/4/2002 | 3/4/2003 | ~ 12 months |
| DV 226 – Phillip Pool | 8/3/2004 | 4/5/2004 | ~2 months |
| DV 173 – Heritage Places Register – Residential Precincts | 1/8/2002 | 14/07/2003 | ~ 11 ½ months |

#### MINOR PLAN VARIATIONS

Under s. 19C of the Land Act, the public consultation provisions of sections 19A and 19B may be suspended for variations that, in the Authority's opinion *do not affect adversely anybody's rights* or for variations that only correct a typographical or similar error in the plan (defined as a formal error). These dispensations do not extend to the formal process of adopting a Plan variation that includes Ministerial approval, referral to a committee of the Legislative Assembly, or possible disallowance by the Legislative Assembly.

The types of plan variations to which such a provision would apply should be reviewed. Furthermore, the possibility of empowering the Authority to make minor variations to the Plan without recourse to the Legislative Assembly should also be considered.

The Authority currently has powers of this sort under Part A3 clause 2.3 of the Plan, but these are confined to map adjustments where the a zone boundary or overlay provision does not follow a cadastral boundary and any adjustment made is not inconsistent with the original intent of the Territory Plan Map.

#### IMPACT ASSESSMENT OF PLAN VARIATIONS

Environmental impact assessment for certain variations to the Territory Plan is currently enabled under Part 4 of the Land Act. Whether this is appropriate is one of the key issues in another discussion paper titled *Review of environmental impact assessment in the Australian Capital Territory*. This paper finds that a properly scoped planning study to accompany the release of certain draft variations is preferable to an assessment under Part 4. Variations for greenfield areas, and variations sponsored by a proponent, fall into separate but related categories. Plan variations for greenfield areas commonly involve the designation of defined land (future urban zones under the proposal in this paper). They also involve the adoption of principles and policies by which the final pattern of zoning and land use are tested.

Recommendations relating to the impact assessment of plan variations are proposed in *Technical paper 4 – Review of environmental impact assessment in the ACT*.

## 8.2 Currency of written instrument

*Recommendation:*

- *Investigate the possibility of providing a warranty of currency for the on-line version of the Territory Plan.*

A paper copy of the written statement is available as a two volume, ring-bound publication, incorporating amendments to September 2002. Updates are available from the Authority's website from time to time. This requires the updates to be printed by the owner of the document and the written instrument updated in accordance with the published instructions.

Current on-line versions of the Map and written statement are available to the public through the Authority's website. This is now the primary source of the Territory Plan Map and the written instrument, but no warranty as to accuracy and currency is given. Whether such a warranty should or could be given should be the subject of further examination.

## 8.3 Integration with the National Capital Plan

*Recommendations:*

- *Hold further discussions between the National Capital Authority and the Planning and Land Authority on possible further integration of the Territory Plan and the National Capital Plan.*

Balancing national capital and local issues is a feature of planning in the ACT, and it is a major reason behind the maintenance of two separate but related schemes: the Territory Plan and the National Capital Plan. This distinction is found other national capitals such as Wellington NZ, Washington DC and Ottawa, to name just a few.

In its 2003 submission to the Commonwealth Parliament's Joint Standing Committee on the role of the National Capital Authority, the ACT Government argued that the dual National Capital and Territory planning regime placed significant restrictions on the Territory's capacity to strategically plan for its ongoing development as a national capital and a community in its own right. The ACT Government also identified a number of inefficiencies and costs to the community resulting from the dual regimes.

These issues include:

- a needlessly complex matrix of planning controls depending on whether or not the land in question was National Land, Territory land, a designated area, or land subject to special requirements
- discrepancies in the community's and applicant's rights to be consulted or to lodge appeals depending on whether the land fell under the national or Territory planning regime
- the inability for either the National Capital Authority or the Territory to enforce compliance with works approvals issued by the National Capital Authority for development on designated land regardless of whether or not it was National Land or Territory land
- significant differences in the strategic planning directions as well as some detailed controls within the National Capital Plan and the Territory Plan, and the relatively complex and time-consuming processes needed to vary the respective plan to achieve consistency.

The ACT Government argued that the National Capital Authority should be responsible for planning and development of a relatively small area of National Land, while the Territory would have responsibility for planning and development of all other land possibly in accordance with a set of pre-determined national capital planning principles. The Joint Standing Committee in part supported this position.

In its 2004 election policy, the ACT Government indicated that it would adopt a cooperative approach with the National Capital Authority to resolving planning issues, but that it would continue to negotiate with the Commonwealth with respect to more significant change.

In the short term it is appropriate to continue cooperative negotiations with the National Capital Authority on a site-by-site or area-by-area basis to achieve consistency between planning and development control regimes. This could result in a gradual retreat by the National Capital Authority from planning and development control over parts of the ACT, in exchange for the Territory agreeing to place within the Territory Plan the provisions sought by the National Capital Authority. Over time, this would reduce the multiple national and Territory planning and development controls. Areas such as the Parliamentary Zone are likely to remain in Commonwealth planning control.

A medium-term option would be to review the National Capital Plan in conjunction with the review of the Territory Plan. The aim of this joint review would be to achieve ultimate consistency between the two documents, both in terms of strategic direction and specific controls. Another aim would be to reach agreement about what should be the respective planning and development control responsibilities of the two planning authorities.

In any discussion about the relationship between the plans, the crucial role of the National Capital Plan in addressing the national interest in the national capital, and setting a broad strategic framework for the planning of the ACT, must be acknowledged.

In the longer term, and subject to agreement with the Commonwealth, various options to create 'One Plan' could be pursued. Such options could include:

- the incorporation within the Territory Plan of a set of negotiated national capital principles and development control provisions, in relation to all land other than National Land within the Parliamentary Zone and certain other tightly defined areas within the Territory
- the incorporation within the Territory Plan of all planning principles and development controls for both Territory and National Land, with the National Capital Plan becoming the repository of high-level strategic planning principles.

In either of these two options, the National Capital Authority may need to be given a referral or even concurrence role in relation to certain types of changes to the Territory Plan and certain development applications. Amendments to both the relevant Commonwealth (including legislation relating to the application of Territory laws to various Commonwealth entities) and Territory legislation would likely have to be made in either case.

The question of whether and to what extent the Territory Plan and the National Capital Plan could or should be amalgamated remains unresolved.

## 8.4 Administrative provisions

*Recommendation:*

- *That the administrative provisions relating to the preparation and amendment of subsidiary documents be located in the Land Act or its regulation rather than the Territory Plan.*
- *Undertake a separate, comprehensive review of definitions in the Territory Plan.*

Certain administrative provisions are currently found in the Territory Plan that would be better placed in regulation to the Land Act. Two prominent examples are found in Part A3 where provision is made for the preparation, adoption and repeal of master plans (clause 7) and planning guidelines (clause 8).

A further area that needs review is that of definitions in the Territory Plan. Each land use policy area contains a table of permissible uses, with the definitions of those uses in Part D of the Plan. Those uses that are not listed as permissible are treated as prohibited uses.

Other uses are exempt from the need for a development application under Part 6 of the Land Act. These are not listed in the Plan, but rather in schedule 1 to the Land (Planning and Environment) Regulation.

A review of definitions beyond those relatively minor changes resulting from the adoption of the recommendations of this paper is a significant task. For this reason a comprehensive review of definitions should be a separate task undertaken in conjunction with the formulation of a new Territory Plan.

## 8.5 On-line access to documents

Many users—including applicants and decision makers—now access the Territory Plan and related documents from the Authority's website. Not only is this convenient and cost-effective, it ensures that the version accessed is current. It contains all relevant policies, land use restrictions and planning rules relevant to any particular parcel. As a result, specific information is easier to find, and there is decreasing use of the full paper version of the Plan.

# Glossary

| | |
|---|---|
| Acceptable standard | A planning rule that, if met, ordinarily means that the related performance measures and objectives are met. |
| ACT | Australian Capital Territory |
| Control | A planning rule found in the written statement of the Territory Plan |
| Core areas | Land affected by the Residential A10 area specific policies under the Territory Plan |
| Defined land | Land that is set aside for future suburbs or other development—it becomes defined through a variation to the Territory Plan |
| Designated area | Land within the ACT for which the responsibility for development control rests with the National Capital Authority |
| Gross floor area (GFA) | Defined by the Territory Plan 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 |
| Land Act | *Land (Planning and Environment) Act 1991* |
| Land Regulation | *Land (Planning and Environment) Regulation 1992* |
| Lease and development condition | A condition, other than a condition contained in a lease, that:<br>1. was approved by the Territory when the lease was granted; and<br>2. regulates the development or use of the land that is subject to the lease.<br>(s.227 of the Land Act) |
| Planning rule | A generic term applying to planning provisions, such as design and siting controls, and land use restrictions—they are currently found in the Territory Plan, Crown leases and a myriad of other documents, plans and guidelines |
| Planning statements | A generic term referring to statements of planning intent, such as aims, goals, objectives, principles and policies |
| Plot ratio | The gross floor area in a building divided by the area of the site |

| | |
|---|---|
| Precinct | An area, usually within a zone, with particular characteristics that are reflected in the planning rules applying to it—for example, a residential zone may have a medium density three storey housing precinct and a two story medium density housing precinct, among others |
| Public land | Land identified in Part C of the Plan as public land—it is ordinarily, but not exclusively, unleased Territory land set aside as a public reserve |
| Public register | A register of various documents held by the Authority and made available for public inspection, under s.227 of the Land Act |
| Relevant Minister | The Minister allocated responsibility for a particular legislative power under the Administrative Arrangements endorsed and notified by the Chief Minister from time to time |
| Subsidiary documents | A generic term referring to all documents referenced by the Territory Plan, for example, codes, planning guidelines, and master plans |
| Suburban areas | All land affected by the residential land use policies other than land affected by area specific policies |

# Appendix A—History of the Territory Plan

### THE FIRST TERRITORY PLAN

The Commonwealth's *Australian Capital Territory (Planning and Land Management) Act 1988*, which commenced on 31 January 1989, provided for the newly established ACT Legislative Assembly to create a Territory planning authority and to confer on it the function of preparing and administering a Territory Plan. In response, the ACT Government introduced the *Land (Planning and Environment) Act 1991* (the Land Act), which commenced on 2 April 1992. The main legislative provisions relating to the Territory Plan are contained in Part 2 of that Act.

The current Territory Plan came into effect in October 1993 following an extensive process of public consultation and review by a committee of the Legislative Assembly.

Section 8 of the Land Act gives the Territory Plan its fundamental power. It provides that:

> *The Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.*

It is important to note that the Act constrains the Territory, the Government and agencies to act only in accordance with the Territory Plan. It is not a breach of the Act for a member of the public to act in a manner inconsistent with the Plan.

### MAJOR VARIATIONS TO DATE

The following variations to the Territory Plan were initiated in response to the recommendations of the Spiller Gibbins Swan report.

> *In 1998 community groups, government agencies, development industry and professional organisations, planning academics, politicians and former ministers, former chief planners and other selected individuals involved in planning in the ACT were given the opportunity to comment on the effectiveness of the Territory Plan, with particular emphasis on its workability. The resulting report by Spiller Gibbins Swan Pty Ltd*—Evaluation of Territory Plan scoping study, final report, 1998—*found that there was a need to improve the Plan in terms of its statements of strategic intent and how the Plan could be made more user-friendly. It also found that there was no call for wholesale restructuring of the Plan, despite the general view that it was somewhat cumbersome and not easily understood by the layperson.*
>
> *In response, significant changes to the Part A of the Plan were made in 2002 through Variation No.155, with the aim of expanding and clarifying its strategic intent. Changes were also made to the arrangement of some of the major components of the Plan. For example, the heads of consideration for development applications were updated and moved to Part A3.*

### Variation 155—Part A

Variation No.155 incorporated changes to Part A and associated re-arrangement of other parts of the Plan. It came into force in February 2002. The key changes were:

- Some of the material formerly contained in the introduction and users' guide was transferred to the amended Part A3, to present a more coherent picture of the planning system.
- Matters for Consideration, formerly listed in Appendix I, were significantly revised and incorporated in Part A3.
- Definitions of terms were moved from the appendices to a new Part D to reflect their relevance to the core sections of the Plan.
- Some of the more detailed and specific policy statements previously contained in Part A2 were relocated to the relevant land use policy section in Part B. This was done to focus Part A2 on strategic matters.
- New explanatory text made it clear that the policy statements in Part A2 are not matters for consideration for development proposals, but have a role in assessing proposed variations to the Plan.

### Variation 158—Group Centres

In June 2002 variation No.158 introduced new group centres land use policies. It replaced four previous group centres policies.

### Variation 175—Industrial Land Use Policies

In a similar fashion to variation No.158 and largely in response to the recommendations of the Spiller Gibbins Swan report, variation No.175 introduced new industrial land use policies to the Territory Plan It came into force in July 2003.

## MAJOR REVIEWS OF THE PLAN—STEIN

The 1995 Stein Report into the administration of ACT leasehold made a number of recommendations, some of which were pertinent to a review of the Territory Plan, as was the associated Government Response of March 1998. The relevant recommendations and the related Government response are as follows:

**Recommendation 6**

A statutory Territory Planning Authority be created, charged with the following functions and responsibilities:

- to produce and keep under review a Land Use Suitability Plan for the ACT, updated five yearly, which identifies land:
    - used for urban purposes
    - required for future urban expansions
    - required for forestry
    - required for environmental protection
    - required for water catchment and supply
    - required for long term rural use
- to produce and keep under review a Strategic Plan for the development of the ACT, to be updated five yearly
- to produce and keep under review a series of Development Control Plans (DCPs), annually updated, which identify areas suitable for development or redevelopment and specify the kinds of development favoured. DCPs would cover those areas where it is thought desirable for development to occur in the short-term. They would not provide a blanket indication of desirable development covering large areas
- to produce Land Management Plans for rural lands
- to perform other functions required under the Land Act (as amended), such as design and siting applications, concurrence powers, and the role in greenfield development
- to report annually to the Legislative Assembly.

**GOVERNMENT RESPONSE TO RECOMMENDATION 6 RELEVANT TO THE TERRITORY PLAN**

Not agreed.

The Government acknowledges the need for an alternative system to deliver planning and land administration services in the ACT, but the organisational structures proposed by the Board are not the best models to pursue. In particular they would be inconsistent with the need to develop an integrated and client-focused approach to planning and development activities. The Government's approach to the administration of land management, already announced in the Policy Statement, is based primarily on the recommendations of the Mant/Collins report, but includes elements of the approach recommended by the Board. The Government's approach is summarised below.

Strategic Planning. The need for whole-of-Government strategic planning is vitally important, not only to provide the framework for the Territory Plan (and hence control of land use) but also to provide the necessary longer term planning for the Territory's economic, social and environmental future. This should not be the responsibility of land use planners and land managers alone, since this kind of strategic planning has a much broader focus than simple land use. Accordingly, responsibility has been given to the Chief Minister's Department to manage the Territory's first strategic plan since self-government. Given the

broad nature of metropolitan strategy, this is being done jointly through the current Metropolitan Growth Strategy Review.

The Government supports the concept of specific area Development Control Plans. These will be developed in close consultation with local community and commercial stakeholders through the precinct planning and management process. Precinct planning and management is a coordinating function which will fall within the responsibility of the Department of Urban Services.

**Recommendation 70**

The Territory Plan or the Land Act contain an express provision which permits a breach of a performance standard when the breach does no harm to the underlying purpose of the particular standard and is consistent with the aims and objectives of the Plan.

**PARAGRAPH 18.41 OF THE STEIN REPORT**

At the same time excesses of performance standards can have the capacity to unreasonably impact on amenity. However, breaches of performance standards should be permitted where they do not harm or undermine the stated underlying purpose of the particular standard. In other words, where the variance still meets the purpose of the standard, it may be permitted. This principle, in our opinion, should be written into the Land Act or the Plan.

**GOVERNMENT RESPONSE TO RECOMMENDATION 70**

Agreed.

The recommendation reflects the way the land and planning approvals system currently operates. The principle underlying the recommendation, outlined in paragraph 18.41, is provided for under the Territory Plan, as the Codes in the Plan are based on assessment of whether an application meets the performance criteria rather than the qualitative criteria alone.

Implementation: not required.

**MAJOR REVIEWS OF THE PLAN—SPILLER GIBBINS SWAN**

In 1998 Spiller Gibbins Swan Pty Ltd was commissioned by the ACT Department of Urban Services to evaluate the Territory Plan with emphasis on the workability of the written statement and the map. Its review did not investigate the strategic policy basis of the Plan nor site specific planning issues. Rather, it focussed on *what works well; what does not work as required; and what means could (be) investigated to improve the workability of the plan* (Spiller Gibbins Swan, page i).

The resulting report, Evaluation of Territory Plan scoping study, final report, was published in September 1998. It was informed by consultation with community groups, government agencies, development industry and professional organisations, planning academics, politicians and former ministers, former chief planners, and other selected individuals

involved in planning in the ACT. It found that there was no call for wholesale restructuring of the Plan, despite the general view that it was somewhat cumbersome and not easily understood by the layperson. Similarly there was no significant dissatisfaction with the format of mapping. Nonetheless, three broad areas of concern emerged:

1. Structure and content issues
    - clarity of expression of the strategic intent of the Plan
    - clarity of expression of the Plan's intent statements for particular land use policy areas
2. whether there is a need for intermediate level strategic planning objectives or instruments
3. how the strategic intent of the Plan could be more clearly conveyed and whether strategic statements for sub-areas of Canberra should be incorporated
4. how the Plan could be made more user-friendly.

In response to the Spiller Gibbins Swan report, Graham Sansom of the University of Technology Sydney was commissioned by Planning and Land Management (now the Planning and Land Authority) to undertake a review of Part A of the Territory Plan, with a focus on clarifying the strategic intent of the Plan.

# Appendix B—Legislative foundation

### AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT) ACT

The overarching legal framework for planning and land management in the ACT is set out in the Commonwealth's *Australian Capital Territory (Planning and Land Management) Act 1988*, which commenced on 31 January 1989. It provided for laws to be made by the ACT Legislative Assembly to establish a Territory Planning authority and to confer on it the function of preparing and administering a Territory Plan.

### LAND (PLANNING AND ENVIRONMENT) ACT

Division 2.2 of the *Land (Planning and Environment) Act 1991* (the Land Act) establishes the basis for the Territory Plan. Section 7 specifies the object of the Plan, which is:

> *to ensure, in a manner not inconsistent with the national capital plan, that the planning and development of the ACT provides the people of the ACT with an ecologically sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.*

This statement is repeated at item 1 of Part A1 of the Territory Plan.

Section 7 of the Land Act further requires that the Plan include planning principles and policies to give effect to the object. To give effect to these principles and policies, it may:

*(a) set out specific objectives and policies; and*

*(b) specify purposes for which land may be used; and*

*(d) incorporate a register of heritage places known as the heritage places register; and*

*(e) identify "defined" land, specifying in addition the principles and policies for its development; and*

*(f) identify an area of land as public land and reserve it for any of the following purposes:*

- *a wilderness area*
- *a national park*
- *a nature reserve*
- *a special purpose reserve*
- *an urban open space*
- *a cemetery or burial ground*
- *a lake*
- *a sport and recreation reserve*

*(g) provide for other matters relevant to the exercise of the powers of the Territory, the Executive or a Territory authority under a Territory law, or the administrative review of the exercise of those powers; and*

*(h) provide for other matters that are necessary or convenient.*

**PLANNING AND LAND ACT**

The key purpose of the *Planning and Land Act 2002*, which came into force on 1 July 2003, was to establish the Planning and Land Authority. The Act gives broad guidance to its role and functions, in accordance with its object (s6):

> *The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT—*
> *(a) consistently with the social, environmental and economic aspirations of the people of the ACT; and*
> *(b) in accordance with sound financial principles.*

The Act also sets out the functions of the Authority (s9), the first four being:

> *(a) to administer the Territory Plan;*
> *(b) to continually assess the Territory Plan and propose amendments as necessary;*
> *(c) to plan and regulate the development of land;*
> *(d) to advise on planning and land policy, including the broad spatial planning framework for the ACT.*

These functions relate directly or indirectly to the Territory Plan. Also in relation to the functions of the Authority section 9(3) provides:

> *The authority must exercise its functions—*
> *(a) in a way that has regard to sustainable development; and*
> *(b) taking into consideration the statement of planning intent.*

Sustainable development is defined in section 74.

> *Sustainable development means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles:*
> *(a) the precautionary principle;*
> *(b) the inter-generational equity principle;*
> *(c) conservation of biological diversity and ecological integrity;*
> *(d) appropriate valuation and pricing of environmental resources.*
>
> *the inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.*

The precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

A statement of planning intent was published by the Minister for Planning in December 2003. Under the heading Governance and Legislative Reform (page 3) the Minister for Planning outlines a possible reform agenda that includes the goal of:

> *elevating the status and role of strategic planning and policy instruments in guiding decision making and engaging the community early in the planning process*

This has implications for the interrelationship between the Territory Plan and high-level policy statements, including *The Canberra Spatial Plan.*

**POWER TO INITIATE VARIATIONS**

Under s.15 of the Land Act the power to initiate variations is given to the Planning and Land Authority. The Minister for Planning is granted similar powers under s.12 of the *Planning and Land Act 2002* by way of a written direction to the Authority, with or without a recommendation from the Legislative Assembly (s.13). Before giving such a direction the Minister must consult with the Authority. Within six days of the direction being given, it must be tabled in the Legislative Assembly or circulated to its members.

# Appendix C—Example of a variation

**EXTRACT FROM VARIATION TO THE TERRITORY PLAN NO.130**
**PRINCIPLES AND POLICIES FOR DEFINED LAND—FOR THE SUBURB OF BONNER**

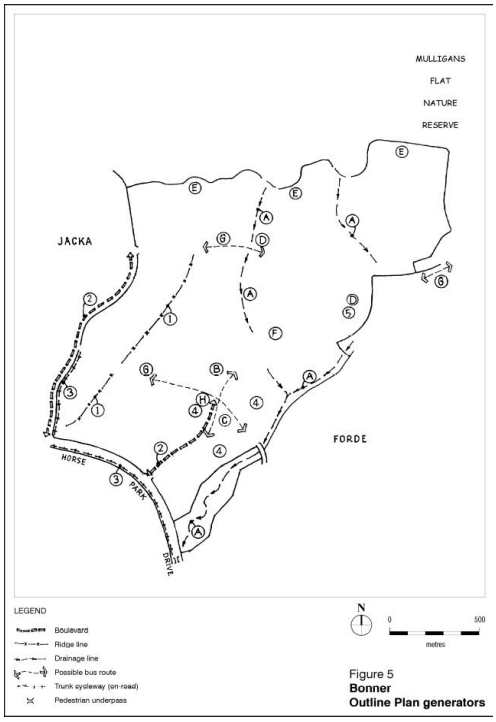


Figure 5
**Bonner**
**Outline Plan generators**

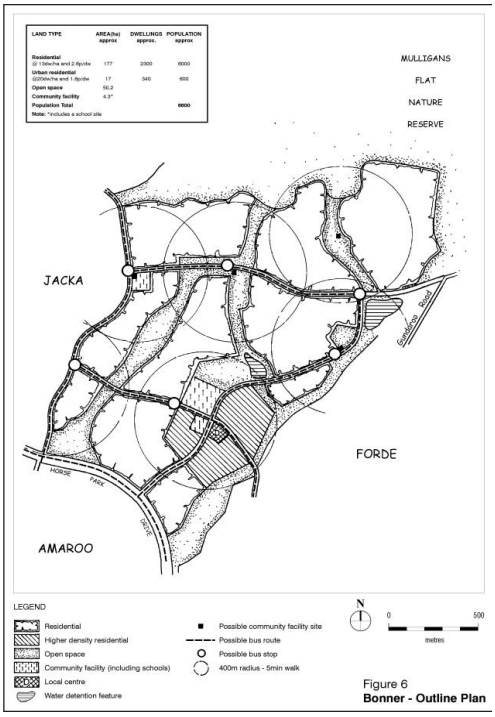


Figure 6
**Bonner - Outline Plan**

**BONNER**

Natural landscape features generally delineate the edges of this suburb with a ridge adjoining the western flank, open space to the east and woodlands within Hills, Ridges and Buffer land use area along the northern edge.

The suburb is located generally north of Forde and north east of Amaroo.

**General policies**

A. Both the central north-south and eastern open space spines are based on existing drainage paths.

B. A centrally located primary school and neighbourhood oval, adjacent to a mixed use/higher density housing area, is required.

C. The location of a local centre and associated higher density residential areas are placed at the intersection of the collector road system and bus routes to maximise exposure and encourage higher public transport usage.

D. Opportunities are to be provided for small-scale community facility sites in open space in convenient locations predominantly along public transport routes.

E. Edge roads are to be utilised wherever possible as a buffer between residential development and areas of open space. An edge road shall be predominantly used as a buffer where the adjoining open space contains substantial cultural heritage or environmental values.

F. A water detention feature is required adjacent to the north-south open space spine.

G. Local bus routes are to be provided through the suburb, encouraging public transport usage.

H. Provide an area close to the local centre for a possible community facility site.

I. Provide for an urban edge trail (equestrian and other uses) that will move incrementally as the urban edge develops.

**Specific policies**

1. The north-south ridge to the west of the suburb is to be retained and protected in urban open space.

2. The suburb is accessed from Horse Park Drive by two roads, each of which shall be boulevard status both in design and nature.

3. Trunk cycleway to be provided to connect to Horse Park Drive trunk cycleway.

4. Higher density housing is to be provided adjacent to the local centre.

5. Cultural and/or heritage site (Aboriginal Heritage) to be preserved within open space.

6. Maintain road connection with Gundaroo Road and NSW.

# Appendix D—Planning instruments in other jurisdictions

## COMMON COMPONENTS OF PLANNING INSTRUMENTS

A local planning instrument is the principal land use control document used by local government. The names of these documents vary across jurisdictions, for example: the Territory Plan in the ACT, local environmental plans in NSW, local government planning schemes in Queensland and Victoria, and development plans in South Australia. Despite superficial differences in format and style, the following components are common to all:

- policy statements
- land use controls
- planning rules (or references to such rules)
- maps.

### Policy statements

Policy statements can vary from a list of general or zone specific aims and objectives to a comprehensive statement of principles and policies such as that found in the Territory Plan. The major innovation in recent years has been the introduction in some schemes of place-specific policies. In South Australia, for example, statements of desired character are attached to localities and some neighbourhoods. The statement for the suburb of Paradise in the City of Campbelltown (north east of Adelaide) is, in part:

> *Residential development in Paradise of single and two storey built form consistent with the character of the locality.*

In this example the desired character is essentially the *status quo*. But there is no reason such a statement cannot envisage a quite different future character, and for the planning scheme to make provision for it.

Statements of desired character have already appeared in the ACT's City West Master Plan for each of the five identified precincts. For example the desired character for the London Circuit and Law Courts Precinct is:

> *It is envisaged that this area will most encapsulate the synergies between the law courts and the civic administration, legal and financial commercial activities of the City. Key issues in the precinct will be parks and plazas around the law courts.*

The role such statements might play in guiding development depends up their legislative status and their quality, in terms of detail and clarity. To be an effective development assessment tool the statement must clearly paint a picture of the future desired development pattern for the area in question. Is it to perpetuate the existing nature and scale of development or is it to move towards a different character?

### Land use controls

Land use controls typically take the form of zoning tables. For each zone (or land use policies area under the Territory Plan) land uses are listed according to whether they are prohibited or permitted.

### Planning rules

Planning rules in planning schemes vary widely in their scope and application. There has been a tendency over recent years to transfer planning rules, such as building height and density controls, from local planning schemes to secondary planning documents such as guidelines or development control plans. Nonetheless, most planning schemes still retain at least some planning rules.

### Maps

Invariably planning schemes contain maps that, at the very least, define land use zones. They can also show various overlays (such as clearance zones from noxious activities) and other geographic controls (such as foreshore building lines). Some also show what are effectively sub-zones. For example, parcels under a special use zone may be labelled with a particular permitted use, such as community facilities, for the purpose of prohibiting other uses.

## PLANNING INSTRUMENTS IN NEW SOUTH WALES

On 30 September 2004 the NSW Government released a discussion paper on statutory plan making as part of a package of reforms (*Standard provisions for local environmental plans in NSW*. Department of Infrastructure, Planning and Natural Resources, NSW, 2004). It invites public comment on a proposal that aims to:

> *simplify the practice of statutory plan making by reducing layers of planning instruments and by ensuring that the LEP [Local Environmental Plan] is easier to use and understand.*

Local Environmental Plans (LEPs) are the basic form of local planning scheme used in NSW.

In contrast to the ACT with its single planning scheme document, each of the 152 councils in NSW administers at least one LEP. To illustrate the diversity of form and content across the state the Department of Infrastructure, Planning and Natural Resources estimates that more that 3100 land use zones are used in LEPs and an even greater diversity in the way land uses are categorised as either permitted or prohibited.

### Policy framework

The proposed model LEP framework reinforces the inclusion of statements of purpose at the beginning of the document. Typically these take the form of aims and objectives for the whole local government area, while more specific objectives are specified for each zone.

Some LEPs contain provisions that require the aims and objectives of the relevant zone to be taken into account in the determination of a development application. A smaller number also require the Plan's general aims and objectives to be considered. Yet others make no such requirement, relying only on section 79C of the *Environmental Planning and Assessment Act 1979* to list matters for consideration.

In a departure from previous practice, the proposed LEP framework introduces a local strategy statement which set out the council's strategic planning objectives in relation to land use and development and the desired future character of key localities and places in the local government area.

**Zones**

The proposed model LEP framework proposes six primary zones:

- business
- industry
- infrastructure, services and facilities
- living
- rural
- environmental protection.

Each of these primary zones has up to five sub-zones. For example, the primary business zone comprises the following sub-zones:

- general business
- central business district
- mixed use fringe
- tourism.

A total of twenty-two sub-zones are proposed, five of which allow for a specific descriptor on the relevant zoning map (for example, a special uses zone may have the descriptor 'church'). In this case the nominated use is permissible at the expense of other special uses.

**Land use control**

Under the proposed model LEP framework permitted uses are defined for each zone. The model suggests core permitted uses for each primary zone, and allows for councils to specify additional permitted uses to:

> *reflect local strategies and manage change towards desired planning outcomes* (p9 of the discussion paper).

**Planning rules**

Planning rules are typically found in LEPs and associated documents such as development control plans that are adopted by local councils. They are also found in state and regional policies.

**Current examples**

The following examples of NSW plans were gazetted before the proposed model LEP framework was released. They are nonetheless fairly representative examples of the most recent plans.

### Newcastle Local Environmental Plan 2003

The Newcastle Local Environmental Plan 2003 (NLEP) aims to reinforce the importance of the existing centres within the city, including the suburban business districts and city centre. The plan anticipates social and economic trends as well as the need to protect the environment.

The NLEP was published in the NSW Government Gazette on 8 August 2003.

The plan incorporates seventeen zones, each with objectives and a table of uses under the headings 'development without consent', 'development only with consent', and 'prohibited development'. It employs two approaches to the identification of permitted uses in zoning tables. Some zones list prohibited development and allow for all other uses being permitted without listing those uses. By contrast other zones, typically those that are more sensitive to environmental impacts, list only the uses permitted with consent and prohibit all other uses, again without listing those other uses.

NLEP requires that the relevant general aims and objectives of the plan together with the zone-specific aims and objectives, and other relevant provisions of the plan are to be taken into account in the determination of development applications.

### Coffs Harbour City Local Environmental Plan 2000

Coffs Harbour City Local Environmental Plan 2000 contains twenty-six zones comprising eight rural zones, seven business zones, one industrial zone, one special uses zone, two open space zones, three environmental protection zones, and a national parks and nature reserves zone. Within each zone land uses are listed under three headings:

- may be carried out without development consent
- may be carried out only with development consent
- is prohibited.

The first two categories comprise permitted uses. Some zones list permitted uses and prohibit all others. Others list prohibited uses, making all others permitted. Still others list both prohibited and permitted uses with any other use usually being permitted.

Each zone has an aim and two objectives but, unlike Newcastle Local Environmental Plan 2003 (mentioned above), there is no specific provision in the plan requiring these aims and objectives to be considered when determining development applications.

## PLANNING INSTRUMENTS IN VICTORIA

### Policy framework

Planning instruments in Victoria take the form of planning schemes. Each municipality has a planning scheme, which sets out policies and requirements for the use, development and protection of land. All planning schemes are derived from a single template and contain:

- the objectives of planning in Victoria
- purposes of the scheme
- a user guide
- a State Planning Policy Framework (identical in all schemes)
- a Local Planning Policy Framework
- zone and overlay provisions
- particular provisions
- general provisions
- definitions
- incorporated documents.

The State Planning Policy Framework covers strategic issues of State importance. It lists policies under six headings—settlement, environment, housing, economic development, infrastructure, and particular uses and development.

The Local Planning Policy Framework contains a municipal strategic statement and local planning policies. The framework identifies long-term directions about land use and development in the municipality; presents a vision for its community and other stakeholders; and provides the rationale for the zone and overlay requirements and particular provisions in the scheme.

### Zones

Victorian planning schemes employ six primary zones:

- residential
- industrial
- business
- rural
- public land
- special purpose
- infrastructure, services and facilities.

Each of these primary zones has up to five sub-zones. For example, the residential zone comprises the following sub-zones:

- residential 1
- low density residential
- mixed use
- township.

A total of twenty sub-zones are available.

In addition, up to ten overlay categories are employed grouped under four overlay types:

- environment and landscape overlays
- heritage and built form overlays
- land management overlays
- other overlays.

The provisions associated with overlays apply to a specific area regardless of the underlying zoning pattern.

#### Land use control

A statement of purpose is given for each zone followed by a table of uses in which uses are listed in one of three sections:

- section 1—permit not required
- section 2—permit required
- section 3—prohibited.

A planning permit is the mechanism by which a council gives development approval.

#### Planning rules

Planning schemes contain both particular and general provisions. The former apply to such matters as advertising signs, car parking or specified types of uses. General provisions provide information administrative matters and heads of consideration for the assessment of development applications.

More detailed planning rules are found in documents adopted at a state level. The key example is *ResCode*, which came into effect in August 2001. It contains planning rules applicable to applications for housing and subdivisions and applies throughout the state. Under the *Planning and Environment Act 1987*, decision-makers are obliged to take it into consideration when determining a development application.

### PLANNING INSTRUMENTS IN QUEENSLAND

Under the *Integrated Planning Act 1997* planning schemes are prepared by local governments to manage growth and change in their local government area. Planning schemes must coordinate and integrate the matters they deal with, and also the State and regional dimensions of those matters expressed through regional plans, state planning policies and the like.

Planning schemes contain the following key elements:

- Desired environmental outcomes (DEOs) provide the foundation of the scheme. DEOs express the purpose of the planning scheme and what it seeks to achieve. They cover a broad range of issues such as community needs, economic activity and nature conservation.
- Planning scheme maps identify broad land use allocations, areas with special attributes, and major infrastructure. Planning schemes are also intended to include plans for growth and infrastructure provision.
- 'Zone' is a common term given to the broad land use allocations in the planning scheme, e.g. residential, business, recreation. The term 'overlay' is often used for identified special attributes of land that are sensitive to the effects of development or may constrain development due to an environmental hazard or the value of a resource.
- Development assessment criteria, mostly contained in codes, are the criteria or standards for achieving the outcomes sought from self-assessable or assessable development. Codes may address a specific type of development (for example, reconfiguring a lot), a type of use such as a home business, or may relate to an identified zone or overlay

Development assessment tables usually identify:

- the assessment category (assessable, self-assessable or exempt) that applies to development in a particular zone or affected by an overlay
- the assessment criteria, including applicable codes, that are relevant to particular development
- whether code assessment or impact assessment is required for assessable development.

**Plan structure and zones**

Typically, Queensland planning instruments divide their respective local government area into districts, and districts into planning areas, also known as precincts. Each district has a district plan which provides detailed information on the preferred pattern of development for the district and on the constraints that may be applicable to particular areas within the district (Cairns Plan p31).

*Townsville City Plan 2005*, adopted in December 2004, is an example of a contemporary Queensland planning instrument. The plan divides its area into eight districts. Each district is further divided into a number of precincts each based on a principle use. These are equivalent to zones in other jurisdictions. The draft plan identifies twenty-three precincts, not all of which are used in every district. For example, the Townsville West District is divided into eleven precincts.

A similar pattern is found in the draft Cairns Plan. This plan identifies twelve districts, which are further subdivided into up to nineteen planning areas (the equivalent to precincts in the Townsville plan). Precincts and planning areas are comparable to zones in other jurisdictions.

In addition, the Townsville plan employs eleven overlays ranging from acid sulphate soils to waterways and wetlands, while the draft Cairns plan employs twelve. Each overlay has a corresponding code as outlined below.

#### Land use control

Typical of recent Queensland plans each of the twenty-three precincts in the Townsville plan has a land use table listing uses in one of four categories:

- exempt
- self assessment
- code assessment
- impact assessment.

The tables also list codes that are applicable to the particular use. For example, a detached house in a traditional residential precinct is affected by the Detached Houses Code.

#### Planning rules

Planning rules are either embedded in the planning scheme or, as found in the Brisbane City Plan, contained in separately published codes. In each case the relevant code is referenced in the corresponding land use table.

In addition planning rules are contained in documents published by the Queensland Government. *Queensland development code – part 12 – design and siting standard for lots 450m$^2$ & over, August 2002* is an example of such a code. It is a performance-based control that is applied in conjunction with local planning rules.

### PLANNING INSTRUMENTS IN SOUTH AUSTRALIA

Planning instruments in South Australia take the form of development plans that are applicable to each local government area. While there are differences in content, each development plan has:

- a contents page
- objectives, principles of development control (development assessment policies) and other standards for the Council as a whole and for each policy area and zone within the Council
- a general index map of the Council
- zone maps.

Many development plans also have:

- lists of complying and non-complying kinds of development
- lists of public notification categories (setting out the extent to which the community has a right to be consulted, and has appeal rights, against specific forms of development)
- a Structure Plan for the whole or parts of the Council
- Concept Plans for specific areas or sites within a zone.

The content of development plans is specified by the State Government and must be consistent with the relevant planning strategy.

Planning SA (part of the Department for Transport and Urban Planning) is currently undertaking a review of development plans through its Better Development Plans project.

#### Policy framework

Broad planning intent for South Australia is enunciated by the State Government through a number of planning strategies for metropolitan Adelaide and rural parts of the State. The policies set out in these strategies are put into effect through objectives, principles of development control and other standards in development plans. Decisions on development applications are made on the basis of policies in the relevant development plan.

#### Statements of planning intent

Development plans in South Australia contain comprehensive statements of planning intent at three levels:

- regional or metropolitan
- council-wide
- zone.

Objectives, policy statements and principles of development control are provided in relation to the relevant metropolitan or regional area, and are common to all associated local government areas.

The Marion City Development Plan provides an example of provisions of this type, relating to the development of metropolitan Adelaide:

> *Industrial Development*
>
> *Objective 23: An adequate supply of suitable and appropriately located land to accommodate current and projected industrial activities.*
>
> *Industry requires reasonably level, well-drained land, which can be supplied with the appropriate infrastructure and is readily accessible to labour and transport. In choosing suitable locations for industrial land it is also important to consider the effects of industry on surrounding land uses.*
>
> *While supplies of industrial land are adequate in the short term, Metropolitan Adelaide's stocks of good quality industrial land have been reduced over past years. Industrial land is a valuable economic resource and it is vital that new supplies of suitable, well-located land for industry are provided in Metropolitan Adelaide and that land set aside for industry is not developed for other purposes.*

Principles of development control can be quite specific even at the metropolitan level, as the following extract from the Marion City Development Plan shows:

> *Centres and Shops*
>
> *3. Shopping development should be located as follows:*
> *(a) A shop, or group of shops, with a gross leasable area of greater than 250 square metres should be located in a business, centre, or shopping zone, or area.*
> *(b) A shop, or group of shops, with a gross leasable area of 250 square metres or less should not be located on an arterial road …unless located in a business, centre, or shopping zone, or area.*
> *(c) A shop, or group of shops, with a gross leasable area of 250 square metres or less located outside a business, centre, or shopping zone, or area, should:*
> *(i) not hinder the development or function of any business, centre, or shopping zone, or area; and*
> *(ii) conform to the design, access, and car parking requirements for business, centre, and shopping zones or areas, set out in principles of development control numbered 18, 19 and 20 below.*

At the council wide level objectives and principles of development control are presented for a wide range of development types across localities. These include transportation, residential development, public open space and many others.

For example, the Salisbury City Development Plan contains the following objective for residential development across the council area.

> *Objective 4:*
> *Containment of housing costs through the encouragement of a full range of design and development techniques.*
> *This can be achieved by measures such as the economical layout of residential development, the reduction of allotment sizes and street widths, the use of innovative servicing techniques, the encouragement of designs which use space efficiently and effectively, and the provision of medium density residential development where appropriate. In addition, new building materials and energy saving devices can be used to reduce housing costs.*

This plan also sets out principles of development control for residential areas at a council wide level. For example:

> *Residential development should:*
> *(a) provide a range of housing and allotment types to meet the needs and preferences of all sections of the community;*
> *(b) protect and enhance the amenity of the locality;*
> *(c) retain existing trees where possible; and*
> *(d) be of a form and scale compatible with adjoining residential development.*

In common with other development plans in South Australia, the Salisbury plan also sets out objectives and principles for development control for each zone. For example, among the objectives for the industry zone are:

> *Design and Appearance*
>
> *Objective 6: Enhancement of the appearance of localities through appropriate landscaping, design and siting of development, especially in areas prominent to the general public (e.g. along arterial roads) or local residents.*
>
> *Objective 7: Development which contributes to the creation of visually-attractive entrances to Adelaide and Salisbury.*
>
> *Objective 8: Provision of landscaped buffers adjacent to main roads and residential areas.*

The associated principles for development control for the industry zone are:

> *Design and Appearance*
>
> *9. The appearance of land and buildings should not detract from the amenity of the locality or nearby development.*
>
> *10. Development should:*
> *(a) enhance the appearance of localities, particularly where the existing amenity is low;*
> *(b) achieve a high visual amenity, including consistent treatment of heights, setbacks and building materials, in areas prominent to the general public (e.g. along major transport routes including major roads and railways) or residents; and*
> *(c) contribute to the creation of visually-attractive entrances to Adelaide and Salisbury through urban design and landscaping.*

Statements of planning intent in their various forms are given great prominence in development plans. The Salisbury City plan, for example devotes its first seventy pages (of a total of 355) to the objectives and principles for development control on a council wide level, and the next 260 pages to the policies applying to individual zones, although these pages also contain planning rules.

#### Statements of desired character

Planning intent is also disclosed through statements of desired character (also known as statements of desired future character). The director of the Better Development Plans for Planning SA affirmed in January 2005 that statements of desired character are regarded as one of the key components of development plans, and considerable resources are being directed at providing local councils with the skills to write clear and effective statements that will achieve the desired planning outcomes and are defendable in any appeal.

Marion City Development Plan contains what are regarded as quite effective statements of desired character, but these will be reviewed against the findings of the Better Development Plans project in due course.

The following example applies to a residential area known as Medium-density Policy Area 16.

> *Desired Character*
>
> *The Desired Character of the Policy Area is of an attractive residential environment containing low to medium density dwellings of a variety of architectural styles at a higher density compared to that typical of the original dwelling stock in the Area. Buildings of up to two storeys in height are appropriate, with two storey plus attic buildings only being appropriate where proposed to be located centrally within a large site as part of an integrated development, so that the impact of their additional height and bulk does not adversely impact on the amenity of existing neighbouring development.*
>
> *Amalgamation of properties is desirable where it will facilitate appropriately designed medium-density development. Through the gradual redevelopment of properties (particularly those containing lower valued improvements), a wider range of dwelling types will be provided to meet a variety of accommodation needs.*
>
> *Medium density development should not be achieved at the expense of mature vegetation or significant trees on the development site or located where additional or relocated access points requires removal of mature street trees in a road reserve that contribute positively to the landscape character of the locality.*

**Zones**

Within the model development plan structure published by Planning SA is a suggested zoning structure for development plans (Planning SA, 2004). It comprises five primary zones:

- general
- centres
- commercial
- industry
- community.

Each of these primary zones has up to six sub-zones. For example, the general zone comprises the following sub-zones:

- airport zone
- conservation zone
- country township zone
- deferred township zone
- mixed use zone
- settlement zone.

A total of twenty sub-zones are suggested.

The zoning structure found in current development plans varies from plan to plan. For example the Campbelltown City Development Plan employs eleven primary zones:

- residential
- district centre
- neighbourhood centre
- local centre
- district commercial
- local commercial
- community administration
- light industry
- educational
- hills facing
- linear park (River Torrens).

In contrast the Marion City Development Plan employs thirty-four primary zones and a further eight sub-zones for a total of forty-two effective zones.

Each zone contains objectives and principles of development control. Planning rules often form part of these principles covering such matters as traffic, parking, and water management. In the residential zone, statements of desired character for each district or neighbourhood are provided together with quite detailed planning rules addressing such matters as setbacks, access to sunlight, private open space and many others.

#### Land use control

For each zone uses are listed as complying or non-complying. A development application for complying development will be approved provided that it meets all the standards for that type of development. On the other hand a development application for non-complying development will generally not be approved. Such an application can be approved, however, if it meets the policies of the development plan as a whole and then only if the Development Assessment Commission and the council or the Regional Development Assessment Panel agree and the application has undergone a more rigorous assessment process (Planning SA, 2001, p14).

Among the initiatives in the *Development (Sustainable Development) Amendment Bill 2004*, which seeks to amend the *Development Act 1993*, is the inclusion of a prohibited land use category in development plans. This is designed to increase certainty over the range of uses that can be approved.

#### Planning rules

Planning rules are contained in development plans, generally in conjunction with the relevant zones. For example design and siting rules for residential development are ordinarily found under the residential zone provisions rather than in a separate document.

Also typical of residential zones are statements of desired character for particular neighbourhoods. These statements form part of the development plan and must be considered when a development application is determined.

## PLANNING INSTRUMENTS IN WESTERN AUSTRALIA

Planning schemes in Western Australia are prepared under the *Town Planning and Development Act 1928*. Among its provisions is a planning scheme template, which appears not to be rigorously followed. Of more relevance to the structure of planning schemes at the local government level is the Metropolitan Regional Scheme. This plan covers the wider Perth metropolitan area, including the City of Fremantle. It uses a set of maps and provisions to divide the area into broad zones and reservations, the later generally coinciding with public land of various kinds or land identified for a public purpose.

Ordinarily local councils are the decision-makers for development applications, although the Western Australian Planning Commission assumes that role for some proposals, typically where there are significant departures from certain planning rules.

### Current example

City of Perth Town Planning Scheme No.2 (gazetted January 2004)

This planning scheme contains a list of general objectives supported by statements of planning intent for the various scheme use areas (zones), of which there are six:

- city centre
- residential
- residential/commercial
- office/residential
- town centre
- commercial.

This limited range of zones reflects the nature and development pattern of central Perth, and does not include land reserved under the Metropolitan Regional Scheme, or rural land of any sort.

The city is divided into a series of precincts for which various 'use groups' are preferred, contemplated, *or* prohibited. The Council cannot refuse an application for a preferred use, but may attach conditions. Contemplated development may be approved or refused. As the name suggests, prohibited development cannot be approved.

# Appendix E—Development assessment forum model

Following a meeting of key stakeholders in 1998, the Development Assessment Forum was formed to bring together the relevant parties to reach agreement on ways to streamline the processes used for development approval and cut red tape—without sacrificing the quality of the decision making. The forum's membership includes

- the three spheres of government: Commonwealth, state/territory and local government
- the development industry
- related professional associations.

The model proposes six assessment tracks based on project complexity and impact. The planning ordinance or regulatory instrument assigns classes of use or development to a track. An applicant therefore knows in which track their application will be assessed and determined before they make the application. These are:

- exempt
- prohibited
- self-assessment
- code
- merit
- impact.

Currently, five of the six categories are effectively operative in the ACT. The exception is the self-assessment track.

#### Track 1: Exempt

In the ACT, development is exempted from Part 6 of the Land Act (and therefore does not require a development application) through section 40 of the Land (Planning and Environment) Regulation, and, subject to that provision, is listed in its schedule 1.

Such development has a low impact beyond the site and does not affect the achievement of any policy objective. It does not require development approval. It should be simple to identify without the need to make an application.

The Development Assessment Forum states that the statutory plan may specify parameters below which no consent is required. If these parameters are not met, it should be clear whether the proposal then requires a permit or is prohibited.

#### Track 2: Prohibited

Prohibited development is development that is considered to be inappropriate in a given zone under any circumstances.

Development that is not appropriate in specific locations should be clearly identified as prohibited in the statutory plan so that both proponents and consent authorities do not

waste time or effort. It should not be necessary to make an application to determine that a proposal is prohibited.

**Track 3: Self-assessment**

By its nature self-assessable development allows for a party other than the Authority (or the Administrative Appeals Tribunal for review) to assess and determine a development application. In this context another party could be an applicant or a private certifier. There are currently no self-assessable proposals.

There is currently no support either in the ACT Government or the Authority to allow for the assessment and determination of development applications by other parties.

The Development Assessment Forum suggests that this track could be appropriate for developments that can be assessed against clearly articulated quantitative criteria. It is always true that consent will be given if the criteria are met, so self-assessment by the applicant could provide an efficient assessment method. In such cases, the criteria will be set out in advance so that an applicant can prepare an application that conforms to the criteria and submit the application with suitable documentation to show that the application meets the criteria.

Assessment of such applications is against the criteria only, so this type of application will generally be suitable for certification by a qualified person. Little judgement will be required as to whether the criteria are met. A standard consent would issue. There is no need for any review mechanism as an application will either meet the requirements or it will not. Consent is only available to complying applications.

There is currently no support in ACT Government for this track.

**Tracks 4 and 5—code and merit assessment**

Permissible developments, as listed under the Territory Plan, currently fall into one of three categories based on the way they are assessed: code and merit, and impact (see also the next Development Assessment Forum track).

According to the Development Assessment Forum:

- Under code assessment, developments will be assessed by an expert assessor against quantitative and objective criteria and performance standards. Private sector certification is possible. The opportunity for an applicant to seek review of an assessor's decision not to issue a consent could be provided. No other parties are involved.
- Under merit assessment, development applications will be assessed by professional assessor against complex criteria relating to quality, performance and on-site and off-site effects. Balancing of competing policy objectives may be required. In specified circumstances, the views of other parties or agencies may need to be sought before making a decision. Consent is likely to require the formulation of an application specific set of consent conditions. Generally, an applicant will be provided with the opportunity to seek a review of conditions or of a refusal to consent. In specified circumstances, an opportunity for third parties to seek a review of the decision may be appropriate.

Code assessment is employed for the majority of relatively simple proposals that meet all relevant planning rules. Examples are houses in new estates and minor additions.

Merit assessment is employed for more complex proposals that require the exercise of judgement on behalf of the decision maker in the application of planning rules. Typically this occurs when there is one or more departure from performance based planning rules (for example, Residential Design and Siting Code for Multi-Dwelling Developments at Appendix II.2 to the Territory Plan).

The distinction between code and merit assessment is purely an administrative one. There is no such distinction made in the Territory Plan or the Land Act.

**Track 6: Impact assessment**

This track provides for the assessment of proposals that require assessment against complex technical criteria, generally relating to effects on the on-site or off-site environment and requiring prediction of future impacts. This track expects the applicant to prepare an impact assessment as part of the application and that there will be pre-set criteria for the content and quality standards of that impact assessment.

Developments requiring impact assessment are:

- developments that attract a mandatory preliminary assessment under Part 4 of the Land Act
- other proposals for which assessment is triggered by a relevant Minister
- development (including a variation to a Crown lease) that is neither exempt, permissible, nor prohibited, but that could be approved subject to rigorous impact assessment.

These proposals may or may not proceed to full assessment. The list of proposals that attract mandatory preliminary assessment is found in Appendix II of the Territory Plan.

Expert involvement is required to prepare the application, generate predictions, assess impacts, and to assess the accuracy predictions.

Assessment of these proposals is likely to benefit from the views of a range of parties and agencies and a decision about the need for and extent of public notice will usually be required. Generally, assessment will require the evaluation of the applicant’s documentation and the views of other parties by an expert assessment panel.