

The Redrafted Territory Plan: Report of the Independent Assessor

October 2007

STRATEGIES FOR
CHANGE



EXECUTIVE SUMMARY

In August 2007, the Minister appointed an Independent Assessor and a Reference Group of representatives from the interest groups who had made submissions to the initial consultation process of the redrafted Territory Plan. Their task was to review the Audit tables on that Plan. The Audit tables, prepared by the ACT Planning and Land Authority (ACTPLA), audited the changes made from the original Territory Plan to the redrafted one in order to correct errors, and to check whether or not the policies had changed in the redraft. The Independent Assessor was to advise the Minister on ACTPLA's methodology, and to work towards improving the next draft in terms of its policy neutrality and in terms of the issues expressed by the submitters.

The Reference Group, chaired by Tania Parkes, met weekly throughout August and September. The Independent Assessor attended those meetings as an observer. The task was a difficult one but the members of the Group took on the challenge with great commitment. Their individual views and the discussion around the table greatly assisted the Assessor in setting a direction for the next draft.

The key issues raised in the submissions were the usability of the redrafted document, the policy neutrality of the document, the loss of the lease and development conditions (L&D's) and the challenge the new system will place on the affordability of housing. In addition, there were questions on specific policy issues as the redraft exposed the complexity of the current planning provisions.

The redrafted Territory Plan will only be as good as the policies in the existing Plan. Policy neutrality has been maintained wherever possible and the Assessor has requested that, given the government's public commitment to neutrality that, if there is an option, policy neutrality should prevail. Of course, this has not been possible in all instances as the new legislation imposes a different planning system regime, and in meeting the new regime, policy adjustments have had to be made (for example new rules and criteria have been created). This will require users of the Plan to familiarize themselves with the new way of using the Plan.

A completely new structure of the Plan has been developed from the one consulted on in order to improve usability. This new structure applies to the Plan as a whole, and to the individual development tables and Codes. In doing so, consideration has been given to its use as a paper document, but also to its future use online. A new, clearer numbering system is also proposed, but was unable to be included in the text in time for this next exhibition.

The ACT Legislature has passed the new Planning and Development Act 2006 and in so doing has agreed that the new zoning and development assessment system will provide the basis for what is permissible on land rather than the L&D's. Because of this significant change, it is recommended that for any subdivision approved prior to enactment of the new plan, a transitional provision be introduced to allow L&D's for those lots to prevail where they differ from requirements in the relevant Codes. Any subdivisions after that date will need to comply with the new Codes.

This raises the question of the usability of the new Codes for speed of decision making and thus the affordability of housing. The Code track for single dwellings (where they are not in new estates and exempt) is designed to allow most new homes to be quickly assessed. While the existing policies have been returned to this next draft, it is clear that new subdivisions will need to be 'designed' to enable new homes to be code assessed in accordance with the rules. This will require new practice on the part of the government development arm and the private sector. The code may require further development.

The next redraft of the Territory Plan will not be perfect. The drafting process in transferring planning controls from one system to another has exposed the current complexity of the codes

that already exist in the ACT. This has been a brave and positive exercise. However, if it is not followed with a series of policy reviews, then the ACT will be left with an old plan in a new format. The new Plan should be reviewed and the policies modernized over the next few years. This is vital to ensure that the Planning system delivers affordable housing and economic investment opportunities for the ACT.

Finally, Neil Savery and all the staff at ACTPLA working on this revised draft have extended courtesy and assistance to the Independent Assessor and have worked exceptionally hard to finalise a complete redraft in the timetable set. They are thanked and congratulated on what has been a most challenging task.

Sue Holliday

Independent Assessor

October 2007

TERMS OF REFERENCE

The full terms of reference for the Independent Assessor are attached as Appendix 1.

The Independent Assessor was to review the Audit tables prepared by ACTPLA, advise the Minister on ACTPLA's methodology, and to work towards improving the next draft in terms of its policy neutrality and in terms of the issues expressed by the submitters.

APPROACH TO THE TASK

Methodology

The redraft of the Territory Plan is the result of a process undertaken by the Assessor, the Reference Group and ACTPLA staff. .

The Assessor has worked independently from ACTPLA, but of necessity, has worked in close collaboration with the Review team within ACTPLA to assist and guide them, and to inform them of the Assessor's views. The Audit tables had been prepared by ACTPLA prior to the Assessor being appointed.

The Assessor met with Minister Barr in the first week of appointment and was briefed by him on the task ahead. It was stressed that the task related to the Territory Plan itself and not to the Legislation, which was to be table in Parliament imminently. The Legislation has since been passed by the ACT Legislature.

The Assessor has worked in collaboration with The Reference Group set up by Minister Barr. This Reference Group, chaired by Tania Parkes, Tania Parkes Consulting, comprised eight representatives from interest groups in Canberra. Two community groups, two professional associations, two industry groups and one academic institution were represented in the reference group. They reviewed the Audit tables in detail and were also requested by the Assessor to comment on the proposed new structure of the Territory Plan and its Codes.

The Assessor reviewed all the comments received by ACTPLA from interest groups and individuals who commented on the initial version of the redraft. It is important to note that the Audit tables were prepared against that initial draft and as a result will be of no assistance to those now reviewing the new draft due to its extensive restructure. However, the issues raised by those submissions remain the key inputs to reconsidering the way the subsequent redrafted Plan is structured, and its contents.

In addition to listening to the views and deliberations of the Reference Group, the Assessor has met with representatives of several key interest groups in Canberra including the Housing Industry Association, the Master Builders Association, the Planning Institute of Australia, the Institute of Landscape Architects, the Royal Australian Institute of Architects, the Australian Property Institute and the Property Council. She has also met with Government representatives including the National Capital Authority and the Land Development Authority.

The Audit Tables

The Audit tables were prepared by ACTPLA to identify, for every clause in the Territory Plan, its origin in the previous plan, whether it was required in the new plan, whether mistakes had been made in translating it across to the new plan in a policy neutral manner, and whether new drafting was required to meet the revised structure of the new Plan.

The Audit tables were reviewed by the Reference Group. They focused on the clauses in the Audit table that were highlighted as having resulted in a NON POLICY NEUTRAL change (colour

coded orange), and those clauses that had been removed in the new Draft Plan (colour coded purple). All other errors identified in the Audit table were accepted, and it was assumed that they would be corrected in the next draft of the Plan.

While some minor errors were still identified in that process, The Audit tables form a comprehensive record of the translation process from one system to another.

Because the Revised Territory Plan is now restructured following this process, the Audit tables are no longer useful to track clause by clause. It is recommended that ACTPLA retain the tables as a record of the process undertaken. They are the primary source of understanding the basis of how the old Plan has been redrafted.

ACTPLA's process

In addition to the preparation of the Audit Tables, ACTPLA has worked consistently to revise the redrafted Territory Plan for public exhibition. Taking into account the views of the Reference Group and the Assessor, ACTPLA has worked to:

- identify and review whether policy transfers have been policy neutral or not
- identify where judgments have been made when policy neutrality was not possible
- restructure the revised draft to make more useable
- review how all the above have addressed the submissions
- prepare a submissions report
- rewrite the Territory Plan
- revise the Maps where necessary
- prepare for the public exhibition of a revised Territory Plan

The next step in the process is the Public exhibition of the revised Territory Plan. This exhibition will lead to further comments on the Plan and, taking those into account, a final draft will be available for the Minister to take to the Legislative Assembly in March 2008.

The revised draft will not be perfect. There will undoubtedly be interest groups who will continue to raise ongoing concerns with the revised Plan.

The methodology undertaken by ACTPLA has been acceptable and thorough. It has identified most errors in the previous draft, has exposed the policy neutrality issues inherent in changing from one system to another. The submissions analysis has addressed those key issues raised by submitters that can be addressed by the Plan.

The Submissions

112 submissions were received as a result of the initial consultation on the redrafted Territory Plan. Many of the submissions related to individual parcels of land, but the majority tackled the whole Plan and commented on the individual Codes as well as the new approach and structure of the Plan. There were issues raised in the submissions that were not able to be solved by the revision of the Plan itself, as they related solely to the draft Legislation (as for example the issue of the role of the Lease and Development Conditions).

The submissions were of a very high quality and represented thoughtful and useful contributions to the revision of the Plan. This would have been due, in part, to the early consultation undertaken by ACTPLA. The Minister attempted to ensure that a diverse group from those who made comments was represented on the Reference Group.

ACTPLA should prepare a report on the submissions received, their responses to the views raised and make that available publicly.

KEY ISSUES

Following the review of the submissions, the discussions with key industry and government groups, and the Reference group deliberations, there are some key issues to address in the assessment process. They can be divided into two groups: a) broad issues relating to the changes inherent in the draft Legislation and ACTPLA's performance in guiding the changes through the system; and b) the issues inherent in the Territory Plan itself.

The original Territory Plan was drafted by Commonwealth officers to coincide with self government. It has had more than 290 changes since 1993 and there is broad agreement and support for updating it. The ACT government decided to make those changes in two stages. The first stage was to draft new planning legislation and to redraft the Territory Plan to meet the requirements of that Legislation. The second stage was to then review and update the policies inherent in the Plan. The revised Plan ONLY addresses the first stage.

General issues

Many of the issues raised in the submissions objected to the new approach inherent in the Legislation and it is clear that practitioners will take some time to familiarize themselves with the new Plan. The redrafted Territory Plan has exposed the complexity of the original set of policies. There is strong support amongst all groups for the development of a new Territory Plan and it is absolutely essential that the government commit to the second stage of updating and simplifying the policies in the Plan. This can not be achieved in this first redraft.

This process and the 'newness' of the redrafted Plan was not well articulated by ACTPLA in the consultation process and the exhibition material. ACTPLA planners may understand it all, but it was clear in the submissions that the industry groups and indeed the professions found it very confusing. So much so that several groups could only envisage that the new approach was to make the system more complex not less. There is an important need to improve the communication of how the new system works as it is the industry users that will determine whether the new planning approach will be successful.

Issues in the Plan itself

In the Plan itself the submitters highlighted correctly that the redrafted Plan contained errors, was difficult to read, understand and use, and that policies had not always been transferred across to the new Plan and the maps in a policy neutral way. There was confusion about the numbering system and how the new prohibited development provisions were structured.

While it is impossible to translate all policies from one system to another in a completely policy neutral way this was not made clear. Nor was it made clear which policies were not the same. It was unfortunate that promises were made by public statements which originally implied that to be the case, and then apparently were retracted. This also led to a lack of confidence in the redrafting process.

There is an important need to improve the communication of how the new system works for all users of the system. The issue of policy neutrality needs to be carefully presented as the new system cannot transfer all policies exactly as they were originally drafted.

PRINCIPLES FOR REVISING THE REDRAFTED TERRITORY PLAN

Taking into account all these issues, the Assessor has used the principles set out below to guide ACTPLA is making changes to the Plan. In making decisions about issues unable to be resolved by the Reference Group, and in making judgments about how to deal with issues raised in submissions, these principles have been adopted as the basis for the changes.

Principles for Restructuring and Resolving Issues in the revised draft of the Restructured Territory Plan 2008.

Principle One- Usability: Restructure the Plan, development tables and Codes and numbering system to improve the usability of the Draft Restructured Territory Plan. Users should be able to go to one part of the Plan to find all the provisions related to the relevant zone they wish to develop in.

Principle Two- Zone Objectives: Ensure that the zone objectives are redrafted to clearly represent those in the 2002 Territory Plan and to implement the Strategic Directions, protect the planning structure of the City inherent in that Plan and its consistency with the National Capital Plan.

Principle Three- Errors: Correct the errors in the first draft of the restructured Territory Plan

Principle Four- Policy Neutrality: Maintain policy neutrality as far as possible in transferring provisions from one Plan to the other. Where that is not possible, (and there are many places it is not possible) the changes should be made explicit together with the reasons for it. It is preferable for policy changes to be made through a public process following the adoption of this restructured Territory Plan.

Principle Five- Government Policy: New government policies that have been made and adopted since the Plan redrafting process was commenced should be included in the restructured Territory Plan. Policy changes that have not been publicly discussed and made by government should await a future amendment.

Principle Six- Mandatory Rules: Mandatory rules in the Codes should be based on pre-existing mandatory requirements in the original Territory Plan. New rules should not be invented unless there is a basis for them. The basis could be an existing guideline which can be codified, an agency requirement that can be codified or leading practice that is widely accepted.

Principle Seven- Criteria: There should be criteria drafted for every rule that is not a 'no exception' mandatory rule. The criteria should be performance/outcome drafted as much as possible

Principle Eight- Prohibited Uses: The Schedule of Use definitions should be the same as in the 2002 Territory Plan. The redrafted Plan should ensure that the list of prohibited uses is all those uses listed in the Schedule of use definitions that are not assessable. Clarify the Group definitions to minimize the inconsistency of the uses of the subsidiary definitions. All other unforeseen future uses should remain impact assessable.

Principle Nine- Territory Map: As far as is practicable, translate the land use policies in the original Territory Plan and Map into the new zones and onto the new map in an equivalent, policy neutral way.

Principle Ten- Avoid Duplication: Where a provision exists in applicable general codes, it need not be repeated in zone codes.

RESTRUCTURING ISSUES

THE REVISION OF THE TERRITORY PLAN

One of the primary concerns raised in public submissions received during the initial consultation period was the usability of the new Territory Plan. This has arisen partly from the fact that everyone was used to the 'old way' in the original Territory Plan, and partly because the new structure has exposed the complexity of the provisions in the old plan.

One of the real benefits in restructuring the Plan in accordance with the new legislation is that it has exposed the overlap and inconsistencies inherent in the original planning documents. This is a good thing even though it makes the task of restructuring the document more difficult. It also highlights the urgent need to commence a program of revisiting and rewriting many elements of the Plan and the Codes. I will deal with this in another section of my report.

There are three issues in the structure of the Plan that need resolution.

- The first is the general structure of the Plan
- The second is the overall structure of each code and development table
- The third is the numbering system

The general structure of the Plan

The restructured Plan was found by many to be difficult to use. Many found that the separation of the Zone objectives and Development Tables from the Assessment Codes meant that one was always going from the back to the front of a large document. Also, the separation of the precinct codes from the development codes, from the general codes also meant that nothing flowed logically.

Accordingly, a new structure in three volumes is now proposed. Volumes 1 and 2 deal with the existing built areas. The third volume deals with future urban areas. Volume 1 and 2 is structured around each zone. For each zone, the zone objectives, development table and the relevant development code are clustered together. All the relevant assessment provisions for the existing areas are found in Volume 1 and 2. General Development Codes are also in Volume 2.

The residential zone development code is divided into two; one for single dwellings and one for multi unit housing types. The commercial zones Codes are clustered into five precinct codes that reflect the commercial hierarchy: City Centre, Town Centres, Group Centres, Local Centres, and Office Areas outside Centres. The CZ5 Mixed Use Zone has a separate Development Code, as does the CZ6 Leisure and Accommodation Zone.

The revised volume has a significantly enhanced explanatory introduction on how to use the new approach required by the Planning and Development Act 2006.

Volume 1 and 2

1. Governance
2. Strategic Directions
3. Residential Zones
 - a. Zone Objectives and Development Tables
 - b. Single Dwellings Development Code
 - c. Multi Unit Dwellings Development Code
4. Commercial Zones
 - a. Zone Objectives and Development Tables

- b. Civic Centre Precinct Code
 - c. Group Centres Precinct Code
 - d. Town Centres Precinct Code
 - e. Local Centres Precinct Code
 - f. Office Areas outside Centres Precinct Code
 - g. CZ5 Development Code
 - h. CZ6 Development Code
5. Industrial Zones
- a. Zone Objectives and Development tables
 - b. Industrial Z1 –Development Code
 - c. Industrial Z2 –Development Code
- 6, 7, 8, 9 All other Zones and their Development provisions and codes
- 10 Other Precinct Codes
11. General Codes
- 12 Overlays
- 13 Definitions

Volume 3: Future Urban Areas

- 1. Structure Plans
- 2. Concept Plans
- 3. New Estate Subdivision Code
- 4. General Codes

The Structure of each Code and Development Table

As suggested above, the principle of integrating the provisions relevant to each zone has been pursued in the structure within each code too.

Within each Code, the structure will be as follows:

- 1. Zone name
- 2. Part 1: Zone specific provisions (where required)
 - a. Relevant elements, rules and criteria
- 3. Part 2: General Development Provisions
 - a. Relevant elements, rules and criteria
- 4. Part 3: Site, Area, Type specific Provisions (where required)
 - a. Relevant elements, rule and criteria

The development provisions are now consistently structured around seven elements:

- 1. Restrictions on Use
- 2. Building and Site Controls
- 3. Built Form

4. Parking and Site access
5. Amenity
6. Environment
7. Services

Within each element, there are a series of headings (items) under which are set out the relevant rules and criteria.

Adoption of the structure generally as outlined above should significantly improve the usability of the revised draft of the Territory Plan. It will also aid the eventual placement of the Plan onto a web based access system.

NUMBERING SYSTEM FOR THE REVISED DRAFT

A major difficulty in using the redrafted Plan was the numbering system for each Code. The current numbering system for the Plan was raised in many submissions. The primary concern has been the duplication of common numbers in different parts of the plan and an inability to know where you are in the Plan.

There is significant difficulty in changing the current numbering system for the revised draft due to the computer template currently used for the formatting of the Plan. It is considered unlikely by ACTPLA that a new numbering system could be in place in time for the redraft exhibition in November. Notwithstanding that difficulty, a new system would significantly assist users of the Plan and should be ready for the final in March 2008.

The components of a new numbering and formatting system would include:

- Starting each section of the Plan on a new page
- The footer should be in a larger, bold font. That way, the user will always know which Code and which part of that code they are in. The footer should refer to the relevant code. The footer or header on each page should refer to the relevant part of that code.
- Utilise A, B, C to describe the Parts of each code rather than 1, 2, 3. That will avoid too many numbers in any future system
- Ideally, consider a simple numeric numbering of clauses (rules and criteria) within each code.

Each code would have a self contained numbering system. Each general code, when redrafted in the future, could also use the same system where rules and criteria exist.

ACTPLA is concerned about renumbering the clauses of Codes given their possible variation in the future. This is a challenge, but simplicity of use should prevail in any future system. It is important that each clause within each code has a unique number, thus avoiding the previous criticism.

A new numbering system for the revised Territory Plan is essential. It is noted that it cannot be ready for the exhibition in November. It is not the task of the Assessor to design a new numbering and formatting system, but one should be ready for the final draft to be submitted to the Minister in early 2008.

ZONE BY ZONE ISSUES

RESIDENTIAL ZONES

Key Issues in submissions

Submissions regarding the Residential Zones were numerous.

In general, there was a strong concern that the current structure was not useable, that it lacked clarity and consistency of format, and was repetitive. Many submitters clearly did not understand the distinction between a 'rule' and a 'criteria'. As a result there was some confusion about the role of the statements of intent. The numbering system came in for much criticism. There was a call for more diagrams to assist in understanding the code better. There was a strong concern about the apparent loss of the role of Neighbourhood Plans.

What is clear is that the restructure has highlighted many failings in the current set of controls which are exposed when restructured. Many submitters have called for a comprehensive review of the residential provisions throughout the ACT.

Below are examples from the submissions received which cover the key issues that were raised:

- Whether the Assessable uses in R1 and R2 are appropriate, or whether some community uses should be prohibited.
- Whether single dwelling houses should be permitted in higher density zones
- Stronger emphasis should be given to achieving energy efficiency and passive solar design and the Code should have clearer objectives to promote sustainable development.
- Set backs should vary depending on the orientation of block
- Exempt residential should also apply to additions
- Proposed increases in set backs are not supported as increased setbacks will impact affordability
- The controls are overly prescriptive with resultant cost imposts and design constraints
- Loss of Section Masterplans from B11/12 is not policy neutral, and should be retained as a precinct code
- The draft ignores the orientation of new buildings and the Code should more clearly state that private open space should be on the north side of the building
- Electricity lines should be underground
- Objects to the apparent loss of open space on residential blocks.
- Changes to A10 policies are unclear

The Audit Tables

ACTPLA has taken every clause of the Zone Objectives, the Development Table and Development Code and set out in an Audit Table the origin/location of the provision in the existing Territory Plan, where clauses have been omitted and the reason for their omission, where clauses have been added and the reason for their addition, the location of the clause in the Restructured Territory Plan. This process has allowed the staff at ACTPLA to identify errors and to highlight changes that have been made from the original Territory Plan.

Key issues in the Reference Group Discussions

The Reference Group reviewed the Audit tables for the Residential Zones, their objectives, development table, and code. They focused on the clauses in the Audit table that were highlighted as having resulted in a NON POLICY NEUTRAL change, and those clauses that had been removed in the new Draft Plan. All other errors identified in the Audit table were accepted and it was assumed that they would be corrected in the next draft of the Plan.

The Reference Group was critical of the structure and usability of the Code. They also felt that the new Code was not translated in a policy neutral way from the previous Plan and that many unintended outcomes had crept into the code as a result. They requested that five codes, one for each 'sub-zone' be prepared to make it easier to use.

The key issues raised were similar to those in the submissions:

- Objection to the increased set backs suggested in the redraft
- That more emphasis should be given to sustainable design requirements.
- Concern that the use of site coverage rather than plot ratio would lead to an erosion of private open space
- The reference group was divided on whether the use of the term 'compatible with existing character' would inhibit architectural design opportunities and merely preserve a no change scenario
- The importance of landscaping to the character of Canberra's residential areas
- The role of the 'neighbourhood plans' as they are considered by many to be the local neighbourhood planning documents and are not reflected in the redrafted Plan.
- The importance of developing future precinct codes
- Issues of interface between residential uses and other uses in residential areas

There were specific clauses that they requested be changed, or they requested the Independent Assessor to investigate.

Discussions with Key Submitters

In addition to the deliberations of the Reference Group, discussions have been held with several of the key submitters. Of particular relevance to the Residential Zone and Code deliberations were meetings with the Real Estate Institute, the HIA, MBA and the Land Development Authority.

SPECIFIC RECOMMENDATIONS FOR THE RESIDENTIAL ZONES, DEVELOPMENT TABLES AND CODE

Each issue raised was assessed against the set of ten principles outlined in this report. The Audit tables outcomes were incorporated by ACTPLA and the Reference Group comments as recoded in the minutes of their meetings were discussed between the Assessor and ACTPLA staff, and decisions made based on the principles outlined above on the basis of experience and consistency.

The key issues for resolution are as follows:

ISSUE	RESPONSE
Restructure the Code to simplify and improve usability	The code is to be restructured into two codes; one for single residences and one for multi unit housing types. The codes themselves are also restructured in accordance with the general approach outlined in this report.
Renummer the Code to improve the ease of use	The numbering system has caused problems throughout the Plan. A new approach to numbering is proposed but is unable to be incorporated in this next draft
Redraft the Development Tables	The tables will be restructured as follows: exempt development, code track development, merit track development assessment (including specific sites development), impact track development assessment, prohibited development This is for clarity in usability. This is being applied to all Development Codes
Clarify how the prohibited uses schedule was developed.	The new Act requires that prohibited uses be listed. Prohibited uses are those uses, defined in the Definition schedule, that are not <i>permitted</i> . All 'new and innovative' uses not defined in the definition schedule are permissible using impact assessment.
In adopting the DAF approach to the Codes, there should be a rule wherever possible, but there should be a basis for inventing that rule (existing guideline/ agency requirement/ leading practice) If no basis exists, a criteria should be crafted in preference from the Matters for Consideration in the original Territory Plan.	Rules can only exist where a current provision can be turned into a 'rule'. Otherwise, those provisions have been drafted as criteria. New rules that would form the basis of a future Code Assessable track will be prepared in the next stage in the development of the new Plan.
Unless the rule is a mandatory requirement in the original Territory Plan, a criteria should be drafted	There should be a criteria associated with all but 'no exception' rules.
Rewrite the Introductions to the Codes to improve the understanding of how to use the rules and criteria in the code, to link it to the zone objectives and the development tables, and to set out the structure.	Agreed. New Introductions have been written for all Precinct and Development Codes.
Restructure each code to improve usability	Agreed. The codes are to be restructured in the following order: specific zone by zone provisions, general provisions applying across all zones within the code, site specific provisions applying only to identified sites/areas of land.
Correct all errors in the revised draft	ACTPLA will redraft picking up all the errors from the Audit Table
Consider the benefits of site coverage vs. plot ratio	ACTPLA have agreed to return all relevant clauses to plot ratio. This will over come the concerns about privacy and open space requirements
Object to set back increases in the redrafted Plan	Following discussions at the Reference Group, the set back provisions will be returned to the

	previously existing setbacks for residential properties whether assessed under the code track or not. These set backs should be modified to accommodate open spaces located on the northern side of the buildings.
" <i>Consistent or Compatible</i> with existing character"?	Wherever this terminology is used, the word compatible is to be preferred to consistent
Small lot housing provisions should apply to lots between 250m ² and 500m ²	The small lot housing provisions are a government policy, and the application of those provisions to larger lots undergo public consultation prior to any variation to the Plan.
Lease and development conditions should remain in use	The new Act is now in force and the Lease and Development conditions will no longer prevail once the new Plan is gazetted. However, a transition clause has been inserted in the revised Plan to allow those subdivisions approved prior to the enactment of the Plan to use the Lease and Development Conditions.
Alterations should be able to be code track assessed	It is highly desirable that alterations should be code track assessed.
Referral agencies should not be able to delay applications	The provisions have been drafted so that either an applicant can obtain other agency requirements prior to the lodgment of an application OR ACTPLA will formally refer the application to that agency, in which case, the timelines for response in the Act will apply

In summary, the Residential Code will look quite different to that previously exhibited. The objectives and development tables will be clustered together by zone. There will then be two codes. One that deals only with single dwellings and one that deals with multi unit and other types of housing. For most families, the single dwelling code will be the only one they will need to use.

The changes outlined above should be incorporated in the revised draft of the Territory Plan.

INDUSTRIAL ZONES

Key Issues in submissions

Submissions regarding the new Industrial Zones were received by several submitters. Some highlights are set out below:

- Concern that retail uses are too lenient in the Mixed uses Industrial Zone whereas they should be located in Commercial/Mixed use zones. This conflicts with the hierarchy of centres.
- Concern that heavy and light industry are not separated, that some community uses should be prohibited in those areas and that the objectives are not clear about the off site impacts on residential areas
- Concern that assessable uses in the Industrial zone do not support the centre hierarchy set out in the National Capital Plan.
- Objection to the clarification of the definition of shop in Fyshwick. The emphasis in Fyshwick has changed from industrial to retail and commercial, and as a result, the protection of the retail centre hierarchy has been removed
- The intent of the Industrial policy has been lost where retail uses have been introduced into the Industrial Zones.
- The new industrial controls are inconsistent with the National Capital Plan.

The Audit Tables

ACTPLA have taken every clause of the zone objectives, the development table and development code and set out in an Audit Table the origin/location of the provision in the existing Territory Plan, where clauses have been omitted and the reason for their omission, where clauses have been added and the reason for their addition, the location of the clause in the restructured Territory Plan. This process has allowed the staff at ACTPLA to identify errors and to highlight changes that have made from the original Territory Plan.

Key issues in the Reference Group Discussions

The Reference Rroup reviewed the Audit tables for the Industrial Zone development code. The key issues raised were:

- The numbering structure of the development code required further consideration
- They believe there should if possible always be a criterion whenever there is a rule.
- The issue of the 'traditional' industrial use diminishing, but that they should not be replaced with retail and commercial. The definition should be examined
- The change in the definition of 'shop' in Fyshwick. This is before the Court, and although the Auditor General has asked that the definition be clarified, the Reference Group was divided over whether the new definition should be included in the new plan.
- The issue of the buffer between industrial zones and adjoining residential zones requires consideration
- The prohibitions seem incomplete/inconsistent and would lead to inflexibility as the city grows.
- They questioned whether set back controls were necessary in this zone, or whether controls on the colour of roofs were required
- They questioned the restrictive nature of the control on the location of car parking and access to sites, the necessity to protect pedestrians in these zones, and whether screening of storage was relevant.

Discussions with Key Submitters

In addition to the deliberations of the Reference Group, meetings have been held with several of the key submitters. Of particular relevance to the Industrial Zone and Code deliberations were meetings with the Real Estate Institute, the Property Council, and the Australian Property Institute.

SPECIFIC RECOMMENDATIONS FOR THE INDUSTRIAL ZONES, DEVELOPMENT TABLES AND CODE

Restructure the Plan to place each zone objectives, development tables and the relevant Codes together	ACTPLA has already undertaken this restructure.
Rewrite the Zone Objectives to more clearly incorporate the original Territory Plan objectives	The original general zone objectives will be incorporated into the specific zone objectives.
Redraft the Development Tables	Agreed. As in the residential code, they are redrafted in the following order: permitted uses, merit assessment uses for specific sites, impact assessment uses, prohibited uses This is for clarity in usability.
Clearly state that the <i>prohibited</i> uses are those uses, defined in the Definition schedule, that are not <i>permitted</i> .	See response to same issue in Residential Code
Clarify that there are Group definitions that include a series of subsidiary definitions. Where the Group definition is used in the permitted or prohibited table, it applies to all the subsidiary uses as well.	Group definitions will be in CAPITAL letters in the permitted or prohibited table. Subsidiary uses will be clustered underneath the Group definitions
In adopting the DAF approach to the Codes, there should be a rule wherever possible, but there should be a basis for inventing that rule (existing guideline/ agency requirement/ leading practice) If no basis exists, a criteria should be crafted in preference from the Matters for Consideration in the original Territory Plan.	See comment in Residential code
Unless the rule is a mandatory requirement in the original Territory Plan, a criteria should be drafted	As above
Rewrite the Introductions to the Codes to improve the understanding of how to use the rules and criteria in the code, to link it to the zone objectives and the development tables, and to set out the structure.	A new Governance section to the Plan has been drafted and each Code has a new Introduction
Fix up the errors	ACTPLA has adopted all error changes from the audit table
Shops in Fyshwick	There is no common view about the clause that clarifies the definition of 'shop' in Fyshwick. The matter is before the Court and will be dealt with based on the existing Plan. The redrafted

	clause is acceptable as a policy neutral translation of the existing 2002 clause and therefore remains.
Retain the Uses clause	The issue of the Uses clause was resolved by the passage of the Legislation in Parliament.
Importance of retaining the Hierarchy of Centres set out in the National Capital Plan	This principle has been reintroduced into the Objectives of the Zone. The provisions are policy neutral and do not change this principle

In summary, the most important issues in the Industrial Code were the retention of the centre hierarchy and the issue of the ‘shops’ in Fyshwick. Most of the other issues related to matters associated with the Planning and Development Act. Changes as highlighted above should be introduced into this next draft of the Plan.

The changes outlined above should be incorporated in the revised draft of the Territory Plan.

COMMUNITIES FACILITIES ZONE

Key Issues in submissions

Submissions regarding the Community Facilities Zones were received by several submitters. There are only a few issues as follows:

- The word “higher” in “higher order” is removed from the zone objective in order not to imply that community uses are “lower order” uses.
- Questioning whether in fact community groups get preferred access to community buildings

The Audit Tables

ACTPLA have taken every clause of the Zone Objectives, the Development Table and Development Code and set out in an Audit Table the origin/location of the provision in the existing Territory Plan, where clauses have been omitted and the reason for their omission, where clauses have been added and the reason for their addition, the location of the clause in the Restructured Territory Plan. This process has allowed the staff at ACTPLA to identify errors, and to highlight changes that have made from the original Territory Plan.

Key issues in the Reference Group Discussions

The key issues raised in discussions of the Reference Group were:

- The removal of the community needs assessment process is not policy neutral and is not supported
- The Reference Group object to the requirement to fence community buildings
- Noise interface with surrounding buildings is an important issue, although it was accepted that community uses imply a noisier environment than residential. To address this, the zone objectives should address the fact that buildings in this zone are likely to be noisy
- Criteria should be included to allow a DA to be referred to other agencies and dealt with if a statement of compliance is not able to be obtained in a timely way. All utilities should be subject to time limits on providing responses

Discussions with Key Submitters

None of the submitters met with have raised any major concerns about the Community Facilities Code.

**SPECIFIC RECOMMENDATIONS FOR THE COMMUNITY FACILITIES ZONES,
DEVELOPMENT TABLES AND CODE**

Rewrite the Zone objectives to give appropriate value to community uses	Agree.
Ensure that community groups DO get priority of use in community buildings	The general zone objectives will be incorporated into the specific zone objectives, and clearly state that community uses have priority over the use of community uses land. This matter has been referred to ACTPLA for follow up within government as it is a policy matter not strictly controlled through the planning system
Retain the requirement for Community Needs Assessments to be undertaken by potential alternative users.	Territory Plan Amendment 263 (7 September 2007) inserted a clause that replaced the Community Needs Assessment. The new requirement sets the test that: "the site has not been identified by the Authority as being required for COMMUNITY USE" The relevant uses that this clause applies to are set out in the Community Facility Zone Development Code.
Review the requirement to fence community facilities	This provision is deleted. Fencing of sites are dealt with in the Community and /recreation Facilities Location Guideline
Address the issue of Noise interface between Community uses and adjoining residential uses	The noise interface issue between uses is dealt with adequately in the Community and Recreation Facilities Location General Code.
Ensure that utility agencies address compliance issue in a timely way.	The revision includes a provision that applicants have the option of providing a statement of compliance from the Utilities agencies at the time of lodgment of their development application, or a mandatory referral will be made by ACTPLA that brings in the statutory timeline for response

ADDITIONAL ISSUES

Residential Uses on Community Land

In reviewing the community facilities code it became clear that if a residential use or retirement village (other than supported housing) was to be developed on a parcel of community land, the proposal did not have to comply with any residential code or any mobility access code. This is an unintended consequence discovered as a result of the restructuring. This should be rectified in the new draft. Accordingly, any residential uses, including supported housing, would need to comply with the provisions of the relevant residential code.

In summary, the main issue of concern with this code was the structure and the issue of interface with adjoining uses. The new draft should deal with these issues.

The changes outlined above should be incorporated in the revised draft of the Territory Plan.

COMMERCIAL ZONES

Key Issues in submissions

Submissions regarding the Commercial Code were received by many submitters. This Code is the most complex of all the Codes and caused the most confusion in its new format. Many of the comments and issues raised were based on a mis-reading of the redrafted code. Some highlights are set out below:

- The Commercial Code is too complicated and obscures the hierarchy of Centres set out in the national Capital Plan
- There is an inconsistency in the way certain uses have been included in the different zones
- The permitted uses are old fashioned and do not encourage lively active mixed use centres
- Prohibited uses are confusing and not policy neutral with current controls
- Some uses that are permitted are incompatible with commercial activities
- Some areas of mixed use commercial activity are undesirable
- Ancillary uses provision should be clearly reinstated
- Building heights have been introduced where none exist in the existing Plan
- Object to the removal of offices along Northbourne Avenue
- Object to the removal of height controls along Northbourne Avenue

The Audit Tables

ACTPLA has taken every clause of the Zone Objectives, the Development Table and Development Code and set out in an Audit Table the origin/location of the provision in the existing Territory Plan, where clauses have been omitted and the reason for their omission, where clauses have been added and the reason for their addition, the location of the clause in the restructured Territory Plan. This process has allowed the staff at ACTPLA to identify errors, and to highlight changes that have made from the original Territory Plan.

Key issues in the Reference Group Discussions

The Reference Group reviewed the Audit tables for the Commercial Zone development code. The key issues raised were:

- The importance of encouraging an active street frontages in commercial zones
- The issue in Gungahlin of permitting higher buildings. This was supported even though it was not policy neutral
- The desired future character issue was raised in the context of commercial centres that were intended to grow. It was acknowledged to be a conflict between sensitive development and change.
- The number of car parking spaces may be jeopardized by the incorporation of the parking areas into surrounding zones
- The practicalities of linking desired future character statements to documents that lie outside the Code
- The use of home businesses in commercial areas
- The issue of noise generating uses in mixed use commercial zones
- The importance of reviewing many of these precincts in order to develop contemporary future controls to allow growth and active uses

- The proposals to add additional uses and height in a part of Braddon Centre

Discussions with Key Submitters

In addition to the deliberations of the Reference Group meetings have been held with several of the key submitters. Of particular relevance to the Commercial Zone and Code deliberations were meetings with the Property Council, Real Estate Institute and the Australian Property Institute.

SPECIFIC RECOMMENDATIONS FOR THE COMMERCIAL ZONES, DEVELOPMENT TABLES AND CODE

Redraft the Commercial Code to make it easier to understand and use.	The Commercial Code is to be restructured into five precinct codes and two development codes. This will reflect the Centres hierarchy.
Address the same issues in this Code as in the others relating to Code structure, clarification of prohibited uses, simplification of development tables etc.	See comments in the Residential Code
Ensure consistency of previously permitted and prohibited uses in different zones	Generally, the uses should revert to those permitted in the prior Plan. This should apply to the old parking areas which have been absorbed into the adjacent zone. (As a result, the former carparks have an increase in assessable uses as well as retaining their previous uses)
Ancillary uses should be assessable in the revised Plan. It is not clear in the current draft	Agreed. It will be clear that ancillary uses are assessable.
The uses and heights along Northbourne Avenue have changed	No, the old provisions still apply. The Northbourne Avenue Code should be used to assess uses and heights along Northbourne Ave. This code prevails over the commercial Code that sits alongside it.
Building heights have been omitted from some Town Centres	All previous building heights have been reinstated.
Fix up all the errors	ACTPLA has adopted all error changes from the audit table
Gungahlin should have increased heights in the town centre in order to obtain a government office block.	In the previous draft, the translation of zones in Gungahlin town centre from policy areas to zones reduced the opportunity for office development. The amount of C2 (business zones) in the area have been reinstated. There is a Gungahlin Town Centre study being undertaken to investigate possible further policy change.
The amount of car parking in centres should be protected.	.Where a former car parking area has been absorbed into a city or town centre zone, a clause exists to ensure that there is no reduction in the amount of car parking in those centres.
Commercial centres must be allowed to grow and evolve and not constrained by the	There was much debate about this issue. The relevant clauses have been redrafted to 'take

character of adjoining areas	into account' the adjoining areas but not to be obliged to replicate them.
The retention of the Hierarchy of Centres as set out in the National Capital Plan is important	The restructure of the Code into the hierarchy of Centres will reinforce the hierarchy.
The changes proposed in Braddon Centre	ACTPLA is currently reviewing the code provisions for a precinct in Braddon to allow active uses at ground floor and two additional floors above. These provisions are intended to go on public exhibition in late October. If accepted they could be incorporated into the final draft early 2008, but it would inappropriate to exhibit them with this revised draft.

In summary, the most important issues in the Commercial Code were its usability, the protection of policy neutral positions and the drafting issues associated with allowing architectural flexibility and growth as opposed to the protection of adjoining residential neighbourhoods. The future of Braddon centre is a special situation that can be dealt with by a parallel exhibition with a view to incorporating the outcome into the final draft in 2008.

The changes outlined above should be incorporated in the revised draft of the Territory Plan.

ALL OTHER CODES

The Reference Group was unable to comment on the remaining Codes in the time allowed for their deliberation. This timetable was set by the need to meet the Minister's aim to place the revised draft of the Territory Plan on exhibition in early November. This is to allow the maximum public consultation time prior to Christmas.

The Reference Group has requested the opportunity to reconvene as soon as the revised Plan has been exhibited in order to comment on the revised draft. This request is strongly supported. They will review the remaining codes at that time.

The Assessor has requested ACTPLA to revise all the other Codes in accordance with the findings of the Audit Tables and the principles for revising the Plan set out in this report.

THE MAPS

Fact Sheet 5 was issued with the previous draft to outline how the maps had been changed as a result of the changes in the redrafted Territory Plan.

A review of Fact Sheet 5 and the Maps has revealed that judgments had been made in translating the previous policy areas to the new zones that were not policy neutral. These judgments had been made in good faith based on the practicalities of the areas in question achieving the opportunities allowed by the future zones. There were also areas of change on the Maps that had not been recorded on Fact Sheet 5.

The Assessor and ACTPLA have reviewed the Map changes again and Fact Sheet 5, with a few minor exceptions, have used the principle of policy neutrality to rectify the zone anomalies. Primarily this affects Gungahlin where there are still large areas of land not yet developed. There, the decision has been taken to put back the full development capacity of the previous policy areas even though the market appears not to have used the full capacity permitted.

A new Fact Sheet showing how the previous policy areas have been translated into Zones will be exhibited with the revised draft.

OTHER ISSUES

The Old Plan in a new Format

It must be noted that this revised draft of the restructured Territory Plan is the old plan in a new format, which in turn was the original Plan in a new format. With the constraint of policy neutrality, the Plan is not an update and does not incorporate any major new policy directions not already agreed. As such, it's an old fashioned Plan that urgently needs to be brought up to date. New policies such as sustainability are not incorporated into this Plan. All commentators are keen to see these elements become part of the ACT's planning approach. Similarly, there are now new approaches to community and precinct planning, and, as the opportunity occurs, the community groups will welcome an opportunity to work with ACTPLA to develop precinct plans under the new planning framework

The land release process

Several of the industry groups also raised with the Assessor issues that relate to the process of the planning system and the multiple layers of decision making required to release new parcels of land. This is in part the result of provisions in the new legislation, but streamlining of these

processes may be possible even within that new framework. This issue should be further reviewed in light of the urgency to deliver more affordable housing on the market. This issue was not possible to address under the terms of this review.

COMMUNICATION

The success of the revised Draft Plan and the new Planning system in the ACT will depend to a large extent on those that use and implement the system. While this includes ACTPLA, it will require the full understanding and cooperation of the private sector planners and valuers, the architects and landscape architects, the housing providers, the property industry, and the mum's and dad's who wish to build or alter their houses.

Communication and training of all those groups in the new ways this Plan will work is essential to its success. It is strongly recommended that time and resources are provided to assist the ACTPLA planners to understand the opportunities that they may permit under the criteria in the Plan, and to engage with all those user groups to assist them in how to best use the Plan.

As an example, the new Plan will require the LDA and the private sector subdividers to design subdivisions in such a way that will enable the houses in the market to be located so that they can be Code assessed. Only then will the planning system be simpler, faster and more effective.

CONCLUSION

Based on the conclusions above and ACTPLA's incorporation of the decisions recommended, the revised draft is ready for public exhibition. The views of the stakeholders and submitters, the Reference Group and the Independent Assessor have been taken into account in formulating the revised Draft. The policy neutrality test has been a driving principle to making the changes.

It must be stressed, however, that the revised draft will not be perfect.

The timetable requested by the Minister has meant that not all the Codes have been reviewed by the Reference Group and ACTPLA has been pressed to make the changes requested by the Assessor and identified in the Audit tables within an exceptionally tight timeframe.

The success of this revised draft will in part depend on ACTPLA's communication with the key stakeholders to equip them to use the new system and support for them to undertake that communication is highly desirable.

Similarly, many submitters strongly wish to update the policy content of the Plan. It is over 15 years old. Accordingly, a program of policy and precinct planning over the next few years will bring the Plan up to date with modern policy settings. This will set the framework for future growth and a high quality of life for Canberrans.

The reconvening of the Reference Group to review the revised Plan once on exhibition is supported. The Group is now very familiar with the new Plan and will add value to ACTPLA's consideration and preparation of the final draft to be submitted in early 2008.

APPENDIX ONE

Restructured Territory Plan – Independent Assessor

Terms of Reference

The Independent Assessor will advise the Authority on methodologies for considering further amendments to the draft Territory Plan for commencement with the Planning and Development Bill 2006, and review the **audit tables** prepared for the following development codes:

- Residential Zones Development Code
- Commercial Zones Development Code
- Subdivision Development Code
- Industrial Zones Development Code
- Non-Urban Zones Development Code
- Community Facilities Zone Development Code
- Parks and Recreation Zone Development Code
- Transport and Services Zones Development Code
- Rural Villages Precinct Code
- Northbourne Avenue Precinct Code

The Independent Assessor will be required to meet with the Reference Group (Terms of Reference attached) to seek their views on the accuracy and completeness of the listed audit tables and other matters as they see fit.

Following review of the above documentation provide a written report to the Minister:

- a) to verify the extent to which the translation of existing controls maintains the policy intent of the existing Territory Plan; and
- b) where the policy intent has changed, whether such change is necessary
 - to allow for functionality of the track based assessment process prescribed by the Planning and Development Bill 2006; or
 - to implement Government Policy
- c) on the views of the Reference Group on the content and explanations contained within the **audit tables**.

Audit tables contain

- existing controls in the Territory Plan,
- where those controls have been translated to in the codes,
- identification of any errors in translation;
- issues with the codes identified through public consultation; and
- where appropriate, suggested amendments.