

Ms Karen Wilden
Project Manager Territory Plan Review
ACT Planning and Land Authority

Thank you for the opportunity to provide further comment on the latest version of the draft Territory Plan. Comments from the ACT Division of the Planning Institute of Australia (PIA) follow.

ACTPLA is to be congratulated on the major efforts it has made to respond to comments on earlier drafts and, in particular, to clarify the overall structure and content of the draft Plan. Combining the zone tables and codes for particular land uses in separately numbered sections aids the usability of the Plan.

There are however a number of areas of concern remaining about the draft Plan. These are detailed on the attached pages and are in summary:

- The draft Plan is very large (now in 3 volumes) and contains a large amount of repetition. There are more than 300 pages of repeated general provisions in the codes, which greatly add to the bulk of Vol. 1 and makes specific controls harder to find. It is recommended that these general controls be combined into one general code, referenced by the individual codes.
- The draft Plan does not contain a clear coherent strategic plan for the ACT. It notes that the “Planning Strategy” is taken to be the Canberra Spatial Plan and the Sustainable Transport Plan and sets out a “Statement of Strategic Directions”. However it is unclear how these things are related, how they are implemented through the draft Plan and how they relate to the National Capital Plan.
- The Solar access ‘rules’ scattered throughout the draft Plan are imprecisely worded, difficult to understand and apply and probably ineffective. They do not appear to be taken from any existing code in the Territory Plan. A much simpler and more effective approach is required.

- The Non Urban Zone Development tables and embedded use restrictions in development codes raise a number of changes that are clearly new policy either by restricting previously broad use definitions or introduction of new uses, e.g. “ Farm Tourism”, “demolition”, “sign” etc.
- The categorization of temporary, minor, ancillary and adjunct uses as requiring merit assessment in their own right is confusing and more onerous than the existing Plan, eg. a temporary use does not currently require development approval.
- The location of the Definitions at the end of Volume 2 is obscure and undesirable. The use of ‘umbrella’ terms to simplify the zone tables is sensible, but there should be a footnote on the tables referring to the Definitions, particularly for the umbrella terms. These terms have embedded or disguised uses that do not appear independently in development tables and may be said to reduce the transparency of the tables.

Please contact me for any clarification or further discussion about any of these comments.

Richard Johnston FPIA CPP
President, ACT Division Planning Institute of Australia

(62381381 0448 381380 richard.johnston@hotmail.com.au)

6 December 2007

Overall Structure of draft Plan

The Plan is now in 3 volumes (one very large and two smaller):

- Vol.1 contains administrative provisions, the maps, statement of strategic directions, zone provisions and relevant development and precinct codes.
- Vol. 2 contains general codes, overlays and definitions.
- Vol. 3 contains structure plans, concept plans and the residential subdivision development code.

Vol.1 contains most of the material required for development applications except for the general codes and definitions. Omission of the definitions from Vol. 1 seems undesirable.

Governance

1.1 refers to the “Planning Strategy” – this is taken to be the Canberra Spatial Plan and the Sustainable Transport Plan.

1.3 refers to the “Statement of Strategic Directions”. It is still not clear how this is to be used, how it relates to the Planning Strategy and how the Plan implements these strategies.

[Note that the footer for this section is wrong and the format of the SSD is not the same as described in sec. 1.3 in that Urban Design is not a separate set of principles]

Residential Zones and Codes

3.1 RZ1 - RZ5 [and other zone tables]. The proviso that development authorised by a lease can still be assessed even if shown as ‘prohibited’ appears to be missing. If point 1. under ‘impact’ is supposed to cover this, it is unclear. The RZ tables do not make much use of generic or ‘umbrella’ terms [see definitions], unlike some of the other zones, to reduce the size of the tables.

3.2 Single Dwelling Code. The codes now follow the relevant zone tables, rather than being grouped together. This helps legibility. The code is in 3 parts: ‘A’ zone specific; ‘B’ general development controls applicable to all single dwelling housing; ‘C’ further controls for different types of single house development. Building and Site Controls appear in each part and the Intent statements are repeated each time. This seems unnecessarily repetitious.

3.2 Single Dwelling Code (cont.) RZ2 – RZ5 zones do not appear to have a plot ratio limit for single houses. This seems anomalous compared to the tight controls for other forms of housing.

The building envelope controls are repeated for each zone in part A of the code, except that the diagrams are omitted for RZ4 & RZ5 and single houses up to 3 storeys and 12m high are permitted in those zones. One set of provisions could be included in Part C1 to avoid this repetition. If necessary the variations for RZ4 & RZ5 could be specified in Part C2, but it's difficult to why such large houses should be permitted in these zones.

The Solar access 'rule' is imprecisely worded, would require complex solar diagrams and may be able to be satisfied by a moving, narrow shaft of sunlight. A much simpler and more effective approach is required. The draft provision does not come from any of the existing codes. A6.6.2 of the current Urban Housing Code states: *North facing windows to main daytime living areas setback from any building on the same block so that the building is within a plane projected at 30o above horizontal from 750mm above floor level at the window for a lateral distance of up to 30o east and west of north, or set back at least 3m from any boundary to the north.* This is aimed at limiting overshadowing from within the block, assuming the building envelope controls will take care of the neighbours. It does not however guarantee that north facing windows will be provided. Presumably the energy rating requirements do that.

3.3 Multi Unit Housing Code. Similar comments to Single Dwelling Code, apart from plot ratio.

Commercial Zones and Codes

4.1 CZ1 – CZ6. Good use of 'umbrella' terms to reduce size of zoning tables.

4.2 City Centre Precinct Code. Why isn't "Commercial Zones – Overview" in front of the zoning tables rather than repeated in each Commercial code? It isn't relevant to the single zone codes anyway.

Wording in R2.7.5 does not seem to reflect Figures A4 and A5 in terms of parapet height controls. Top diagram in Fig. A5 inconsistent with Fig. A4 [ie. parapet height Sec. 14]

Part B – General Controls. Much of this material is repeated in each code.

Part C- Residential Use. This material is repeated for each Commercial code.

The Rules under **5.2 Solar Access** are very complex and would be difficult to administer. They appear to be based on the Apartment Guidelines, but require sunlight to be measured on "the floor or an internal wall of the main daytime living area" rather than on "the main windows of the [living] rooms". R5.2.1 is actually a "Daylight Standard", not a solar access control and is probably covered by the Building Code [check].

Other Zones and Codes

Part B – General Controls. Again, a lot of repetition between the codes.

10.1 Inner North Precinct Code. This could sensibly be grouped with the other Residential codes.

10.2 Northbourne Avenue Precinct Code. This is similar to and could be grouped with the Commercial Codes. About 30 pages of General Controls and Residential controls are repeated.

There are more than 300 pages of repeated general provisions in the codes, which greatly adds to the bulk of Vol. 1 and makes specific controls harder to find. It is strongly recommended that this material be placed in one or more General codes.

Non Urban Zones

Mapping inconsistencies

The explanations of some of the changes to the Territory Plan map that are provided by the NTP Fact Sheet 5 are minimal and unconvincing, e.g. “the use is redundant”.

There are also a number of Non-Urban zone map conflicts with the NCP maps. These should be removed now that the errors have been identified.

The NTP administrative section of the Plan regarding mapping states:” Each piece of land is coded for the Zone that applies and any overlays that are applicable, including precincts. The Planning controls for each Zone identified on the map are documented within the relevant Development Tables and Codes.”

The map inconsistencies create an unworkable NU zone framework where the wrong planning controls and policy frameworks apply; uncertainty in planning outcome is created by the opportunity for appeal on statutory grounds, and the goals of transparency and due process are not carried through in the planning reform project. It is understood that these may be historical mapping errors in which case the opportunity now exists to put right the errors.

Merit criteria approach to Adjunct, Ancillary, Minor, Temporary and Secondary uses

It is well established planning principle that an ancillary use is permitted where it is part of an approved use. It therefore seems an odd inclusion as a separate use warranting merit assessment in development tables. The same is true of minor use. The definitions of both anticipate a preexisting and therefore approved predominant or primary use. The inclusion of Ancillary Use in urban development

tables stems from the existing Territory Plan. However in non urban areas the Plan did not specifically identify the use as part of the list of permissible uses instead locating it along with Minor Use and Temporary Use an advisory statement beneath the table of uses. The only condition being that they are not in conflict with the objectives of the zone.

NU Zone Development Tables

There are a number of new uses introduced here. Of particular concern is the loss of clarity between the permitted uses that required mandatory preliminary environmental assessments, those that did not, and the secondary uses covered by “ancillary, adjunct, minor or temporary uses”.

The existing Territory plan has a clear hierarchy of uses that could be distinguished by their scale of impacts and effects and this has not been translated as all uses are lumped under the merit category. This has the policy effect of increasing the level of assessment required for what was previously considered minor and those uses that were already considered capable of having adverse effects (the PA requirement trigger).

The Development table appears to unintentionally introduce a new planning concept of being able to apply for an ancillary, minor or temporary use without the predominant use. It raises the interesting perspective of an ancillary use merit application where the ancillary use is “*ancillary to the primary purpose of the land*” (from the definition) where the primary purpose is not seeking planning approval. It is also of questionable value that merit assessable planning approval is sought for a temporary use where that use may be of such short nature and duration to outweigh the costs of lodging or assessing the application. This matter would be better addressed through the codes and exempt development. The status applied to these uses that are of such minor nature as to not be separately identifiable (such as “*Ancillary, Adjunct and the like*”) also introduces an interesting convergence with impact assessable development where both uses are not a listed use in terms of Impact track.

NU Zone New uses

Demolition and sign are new uses in the Development tables and clarify existing policy and appear across all zones.

Farm tourism is a new use distinct from Tourist facility, which is the existing use and is also retained in the NU zone development tables. This is not a policy change as the use has been part of leases and rural policy since the ACT rural policy review of 2000. However the introduction of the use and definition, and contraction of the existing Tourist facility use are new to the Plan and cannot be described as a translation when no such definition previously existed for one use and the other use was a broad collective definition. The lineage of the definition is at question not the intent.

Farm tourism is defined as “*operating a craft workshop, shop, guesthouse, outdoor recreation facility, overnight camping area or other activity for tourists that is secondary to the use of the land for the primary purpose **authorised by the lease**.*”

The definition is problematic as it introduces the lease as the primary planning approval in a manner at odds with all other definitions currently in the Plan. Other subsidiary uses refer to primary, predominant or secondary use status to locate the use, not authorised lease. The link to an authorised lease first suggests that there might be leases that are not authorised in some manner. Further it appears to invite either a retrospective planning approval for an existing lease approval or the prohibition on any new application for the use without a separate pre approved primary use application. It would be preferable that the new definition linked to predominant or secondary use in a manner similar to ancillary and adjunct use definitions.

It is also noted that Tourist facility is now constrained by locations when the previously defined use did not have location criteria as a prohibition on the use.

What is also unclear is how such a use is different from tourist facility in any meaningful way or why it was necessary to introduce the new definition or if there was some failing of the existing broad definition of Tourist facility. It appears as a simple duplication of use rather than careful evaluation of the existing definitions for flexibility to achieve the same policy outcome.

NU Zone Rural - Subdivision

A new rural use “Subdivision” has been introduced to the Non Urban zones. However in the Rural Zone the Non-urban code then restricts this use with a limitation on subdivision to only “...*consolidation to optimise the approved use of rural land*”. The current Territory Plan contains no rule requiring block amalgamation of rural land. Territory Plan Variation 200 introduced the Land Act definition for subdivision. The Planning and Development Act 2007 continues this definition and it is clear both Acts anticipate both division and amalgamation of land parcels. It is difficult to find the derivation of this new rule that requires subdivision to only amalgamate land parcels.

NU Zone - Broad Acre

There is a new policy (e) added to the NU zone effectively repeating the intent of the previous policy of future urban availability however the new policy goes further by specifying the concept that future urban investigation will occur only in the Broad Acre area. There is no equivalent policy requirement in any other zone. This new policy contradicts the ACT Planning Strategy (Spatial plan and Sustainable transport plan) which indicate future urban areas across a range of zones from existing residential to river and including the Broad Acre zone. This also contradicts the NCP as only part of the Broad Acre area at Symonston is covered by a future urban investigation overlay.