



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

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

(Reference: [Inquiry into draft variation to the territory plan No 306:  
Residential and subdivision policy review](#))

**Members:**

**MS M PORTER (The Chair)  
MS C LE COUTEUR (The Deputy Chair)  
MR A COE**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**TUESDAY, 17 APRIL 2012**

**Secretary to the committee:  
Ms V Strkalj (Ph: 6205 0435)**

**By authority of the Legislative Assembly for the Australian Capital Territory**

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

**WITNESSES**

**FRAZER, MR BRUCE**, Acting Senior Manager, Territory Plan Review and Implementation, Environment and Sustainable Development Directorate..... **1**

**PONTON, MR BEN**, Acting Deputy Director-General (Planning), Environment and Sustainable Development Directorate..... **1**

## **Privilege statement**

The Committee has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

*Amended 9 August 2011*

**The committee met at 12.01 pm.**

**FRAZER, MR BRUCE**, Acting Senior Manager, Territory Plan Review and Implementation, Environment and Sustainable Development Directorate

**PONTON, MR BEN**, Acting Deputy Director-General (Planning), Environment and Sustainable Development Directorate

**THE CHAIR:** I would like to welcome Mr Ponton and Mr Frazer to this briefing. Thank you very much for coming in. I am sure that the committee is very grateful to you for giving your time, and we are grateful to the minister for allowing you to come along and give us a briefing on this very important inquiry. As you know, this is not a public hearing as such; we are just recording it for the purpose of being able to reflect back on the text later and to use that.

There are two ways we might go about this briefing. We have an hour. Obviously the members will have lots of questions. I know you said you would leave it in our hands but we would like you to tell us what you think would be the best way to approach it. If you have some visual stuff, that is always handy for me; I am a visual person. We do have some fact sheets in front of us—“Solar access in residential areas”, “Solar efficient subdivisions” and “Keeping the neighbourhood character”.

**Mr Ponton:** Yes, that is right. We thought we would focus on those three initially. We thought that the best way to brief the committee would be to use fact sheets. Those fact sheets were prepared because they appeared to us to be the key issues in DV306. Mr Frazer has a presentation that I would recommend that we go through. It is not terribly long but it also includes some visual aids in terms of showing what the impact is, particularly in the new estates, for residential development, regarding the existing rules versus the proposed new rules.

**THE CHAIR:** I think that would be really helpful, so thank you very much. We will proceed that way.

**MS LE COUTEUR:** Can I ask one question first? Have these in fact changed at all from what went out for public consultation?

**Mr Frazer:** No, Ms Le Couteur. I will run through them. There is basically one major change to the solar aspects.

**Mr Ponton:** It will be addressed in the presentation.

**MS LE COUTEUR:** I have seen the public consultation presentation a number of times. I wanted to make sure that you will highlight any changes from what was presented before.

**Mr Frazer:** Yes, that is true. You have recognised it. I have updated it a little bit to bring it up to date with what happened after the public consultation.

**THE CHAIR:** Would you prefer that members stopped you as you went through and asked questions?

**Mr Frazer:** Yes, I am more than happy to do that.

**THE CHAIR:** We will proceed in that way.

*A PowerPoint presentation was then given—*

**Mr Frazer:** This whole process started a couple of years ago. It is all part of the review of the territory plan. If I could briefly go back a couple of steps, in 2008 the new territory plan was adopted. It came through the Assembly as a bill and the act was formed. With the act was the new territory plan. But you will recall that between 2005 and 2008, during the process of looking at the new Planning and Development Act, as it turned out to be, the question of what we do with the territory plan emerged, and it was decided early on that the new territory plan would be reformatted but that there would be no changes made to the substance or the policy of the territory plan. So we had a number of years where there were no changes to the territory plan and no significant changes to policy within the territory plan. But since that time the government decided to proceed with a review of the territory plan and the policies in the territory plan, because that was most important as they tended to be lagging a little bit behind, and with particular reference to solar performance as far as the built environment is concerned.

That was really the genesis of, first of all, 301, which was to do with subdivision—there were two planning variations that were issued in June 2010, so it was a couple of years ago—and 303, which was essentially the codes to do with residential development. They were hand-in-glove, to an extent.

On that occasion, after three months of public consultation, or actually a little longer than that—as you see there were 97 submissions on 303 and 30 submissions on 301, which is to do with estate development—301 and 303 were withdrawn on 3 June, upon the release of DV306. So they are history now; they went so far but went no further, essentially because the impetus behind the public submissions received was that 301 and 303 went a distance but they did not go quite far enough, particularly with RZ2 redevelopment. So it was decided to hold the policy initiatives that were in 301 and 303 but to rebrand them and reissue them in 306.

Draft variation 306 replaced 301 and 303, and it incorporates much the same things that were in 301 and 303. Essentially there are five codes. There are three important residential codes, a lease variation code for the first time—we had not had one before—and a complete revamp of the estate development code, which was formerly called the residential subdivision code.

Together with that we looked at the residential zone objectives. We looked at the residential zone development tables and revamped those somewhat and revised definitions, which was more in the way of housekeeping, just to keep up with the new provisions and the new policies that were in DV306.

**THE CHAIR:** What was the estate development plan called before?

**Mr Frazer:** It was called the residential subdivision code. What was carried over from 301 and 303 into 306—we are still basically in the history of what happened—

was almost everything from those two, including improved solar orientation, improved solar access. Solar orientation is more to do with the orientation of the blocks, the sizing of the blocks, in new estates. Improved solar access has a more fundamental effect in suburbia because it controlled how you could build your houses and what impact the building of those houses would have on your neighbours.

A very important matter that has not got a lot of publicity is that secondary residences were introduced, instead of temporary dwellings and relocatable homes, to simplify the whole process of having a small separate dwelling in your backyard, attached to your house or within the house. There were revised zone objectives and a limit on the plot ratio for RZ1 where there was not one before for multi-unit housing.

As far as these key principles are concerned, I will just touch on these because I am sure you are quite familiar with these now. With solar block orientation, the key principle is that when a new subdivision is designed, there would be a bias against blocks with one or more of these characteristics. So if they are narrow, we would look carefully at it. If that narrow block is oriented 45 degrees north or south, we would look even more carefully at it. If it is sloping to the south as well, those three things combined would probably rule out that block because it is just so difficult to have proper solar orientation on a block with those characteristics. Consequently if you have a wide block that is oriented north-south and that is sloping to the north, it is really quite easy then to design your subdivision accordingly.

We have codified all of this in the subdivision proposals. We have 11 of these compliance tables. If your block is designed so that you get a tick then it is approved; but, sadly, if it gets a cross then it cannot be approved. There is a criterion associated with it so that an applicant, if they want to, can demonstrate that, even though they do not meet the rule, they can, through the criterion, make a statement to ACTPLA, the determining authority. But that would be rare indeed because it would be very difficult to support that sort of variation.

**THE CHAIR:** This is when you are planning an estate. What happens to that land that cannot be—

**Mr Frazer:** It is not approved so those blocks are not created in the first place. They just have to reorganise their design until they comply.

**THE CHAIR:** Until they get it right?

**Mr Frazer:** Yes. On that point, maybe there is one block and for one reason or another it does not comply. But they can make a case that it is not so bad; it is right on the very edge and they can make it work. The policy that is being introduced is that that block is marked as a noncompliant block. So anyone who buys it is aware that there may be some difficulties with this block. They can certainly buy it but they go into it with their eyes wide open, knowing that they may be constrained a little bit, particularly in the upper floor of their house. They might not be able to build as large a house as they otherwise thought they might do. That is why the proposal is to identify those blocks that are not compliant. We are hoping that we do not get any of those but if we do, we have a pathway.

**MR COE:** Does the draft variation articulate how potential buyers would be notified or would it be publicised?

**Mr Frazer:** Yes. The precinct code is the vehicle for that. There is a suburban precinct code. So if this happened in the suburb of Wright, for example, if it was a non-complying block, it would be marked on the suburb map as being non-complying. It would have an asterisk or something to identify that block. Then there would be some words in the document which would explain the reasoning for that. It is the same way as marking a block that might be close to a major road and therefore affected by noise or a bushfire-prone block or whatever. We use the precinct codes to identify block-specific provisions, and this is one of those.

**MS LE COUTEUR:** Will real estate agents tell this to people? There is lots of information that is available if you happen to know it is available. If I am going to buy a block of land, I probably have not studied the territory plan and I do not know that the precinct code even exists. Is the real estate agent going to tell me, “Madam, you don’t want this block of land”?

**Mr Frazer:** You are right. It is a difficulty that we do not have control over what other people give as advice under the territory plan. We do not have a zoning certificate as such, so we do not disclose what is on the block as a matter of the conduct of the sale of the land. But when a block is listed by LDA, and in the case of Wright, all of those details were fully disclosed at the point of sale. So if the potential purchaser took the time, they could have gone through and said, “Yes, this block is affected by this, that and the other thing.”

**MR COE:** The problem is that is an unknown. You do not know to ask those questions necessarily. The crux of the question really is: does the draft variation stipulate what information either the end user must get or what information the vendor must give to the end user?

**Mr Ponton:** No. The short answer is that the territory plan variation or the territory plan itself is not the vehicle to achieve that. That would need to be dealt with through the sale of residential property act.

**THE CHAIR:** Which act?

**Mr Ponton:** The sale of residential property act would be the better mechanism in terms of due diligence and duties of disclosure. It is no different, as Mr Frazer has said, in relation to bushfire-affected properties, properties that have easements, trees that cannot be removed—a whole range of things that could potentially affect a block of land. When a person is purchasing, their due diligence process or their conveyancer would need to identify these things. All that we can do is identify it in the precinct code and hope that the conveyancer will do their due diligence.

**MS LE COUTEUR:** You said that if I bought one of these blocks of land my problem would be that my upper storey could potentially be constrained. If it is a south-facing block I know I am going to be in the shade, but how will this mean that I have more problems with overshadowing?

**Mr Frazer:** You do not but your neighbour will. In the worst case, if it is an east-west block on land that is sloping to the south, you will cast a longer shadow over your neighbour's property because you are chasing the slope of the block. If it is north-south it does not come into the equation so much.

**MS LE COUTEUR:** I was interested to see that it does not favour narrow blocks. If you go out to most of the new subdivisions, they seem to be specialising in narrow blocks. Do you think this will change that?

**Mr Frazer:** No, I do not. We are just setting up a mechanism. The value of a narrow block can be maximised from a solar point of view if the developer chooses to have a narrow block. So we are saying that you can have a narrow block but only under certain circumstances, and ideally north-south. It is possible to have one east-west as well if it is a little bit wider. But you are quite right; the compact blocks are probably here to stay. We just have to manage those as best we can and still achieve those solar outcomes.

The solar access principle is to do with the built form. Essentially it is what I am allowed to do in relation to my neighbour. The principle is simple: no building that I build can overshadow my neighbour by more than the shadow cast by a 1.8 metre fence on the boundary. My neighbour will be confident that no matter what I build on my block, I will not be overshadowing my neighbour's property by more than that shadow length.

**THE CHAIR:** If I build a house today but it only has one storey and then two or three years down the track I decide that, since my family has grown, I want to build a second storey, and I can structurally, that rule will come into play again?

**Mr Frazer:** Yes, it remains.

**THE CHAIR:** It remains current?

**Mr Frazer:** That is a constant in all new blocks and all existing large blocks. Mid-size blocks are dealt with slightly differently. But essentially that will affect you.

I can show you a pretty nifty [3D diagram](#) of this which one of our boffins has prepared. On the left is our current building envelope. So we are not starting from nothing; we already have building envelopes that apply. This happens to be to a large block, to illustrate the point. With these blocks, you can see on the left that we have a building envelope. That is north over here, so the sun is shining from here. Under present arrangements we first build a building envelope at the front which is 3½ metres above the ground and then 45 degrees. It is capped at 8½ metres. But on the southern side of the block we start at two metres rather than 3½ and still go up 45 degrees. So that is our building envelope. It is different at the back because this is the front zone and the primary building zone, and this is the rear zone, which is from 18 metres. It is six metres for the front zone and another 12 metres for the primary building zone, and this is what is left over.

As you can see, this is really pretty constrained under present rules, because with the angles, on that side it is 3½ metres but the angle is 30 degrees. And that is on the

northern side, so it is not going to affect anyone's shadowing because it is on the wrong side of the block. On the southern side of the block, however, we start again at two metres and then a 30-degree plane in the rear zone. There are of course plot ratio controls, building setback controls and building height controls that all come into play as well, but this is just the building envelope.

This is our new proposed building envelope on the right, the white one. You will see that it is uniform in size. Essentially we start with 3½ metres, exactly the same as the current envelope. We draw a plane 45 degrees, exactly the same as the current envelope. We cap it at 8½ metres, exactly the same, but on the southern side, so that we do not overshadow the neighbour, you can imagine that this envelope is complete, basically 45 degrees. Then we come in with our solar angle, our solar plane, and we slice that and throw it away so that we get a 30-degree or 31-degree plane to ensure that if the building is built entirely within the building envelope, it will not overshadow the neighbour by more than a 1.8 metre high fence.

You will see some diagrams by others, no doubt, which show buildings popping out through this plane here and consequently overshadowing. It will be put to you, I suspect, by parts of the industry that it is not possible to build a house or it is much more difficult to build a house under these rules than it was under these rules, because the houses they currently have on their drawing boards will just poke out of the solar plane and we should rethink the solar plane by getting rid of it altogether or by raising what we call the solar fence, which at this stage is 1.8 metres. The higher that that solar fence is, the less constraint there is on the block but, conversely, the more that that building will overshadow the neighbour. So it is a balance between the height of the solar fence, the constraints I have on my block and the rights that my neighbour has to a sunlit open space or to a sunlit sunroom.

You will see too that there is uniformity throughout. We still have the 45 degrees at the back, starting from 3½ metres. But at the back in the rear zone this model is a little more flexible than this model because on that side it is 45 degrees whereas at the back on this side it is 30 degrees. In other words this model tends to push development on a standard single dwelling block from the south to the north-west of the block, or from the front left to the back, depending on which way the land is oriented. Of course this is an east-west block, largely. If it was a north-south block then that solar angle would not come into play at all because it will just shadow the street or the backyard.

I should just touch on a technicality. The solar angle changes according to the orientation of the block. The sun angle does not change but as the block moves—and this is a model block that I have here—and if I am concerned about overshadowing my neighbour. If this is north, the angle is 31 degrees. As I twist this block, the sun angle remains exactly the same, but as I twist, if you look down the boundary the apparent angle changes. The sun angle appears to be steeper. In fact it appears to be steeper up to about 41 degrees. When we get to 45 degrees of orientation, we stop counting. And that is what is a table in the code which is angle X. Angle X varies between 31 and 41 degrees. So if you are lucky enough to have a 45 degree block—we do not advocate them because they are difficult to service from other perspectives; it is more difficult to design a house at 45 degrees to get good sunlight access—you will benefit from that sun angle because with the building envelope that we build, the sun angle is 41 degrees, which is approaching 45 degrees in the current arrangements.

Getting back to our presentation, that is basically the same diagram. So what else has been retained from our journey from 301 and 303 to 306? Secondary residences, which is essentially an option for anyone to live in a small house, a small dwelling, most often in the backyard of a property. The provisions are that the block has to be a single dwelling block to start with, of more than 500 square metres. So it is not the 700 square metres that applies to dual occupancy; it is a dual occupancy but it is a different type of dual occupancy. It is a much lower scale dwelling. It is limited to 40 to 75 square metres of floor area, so it is not all that large. A double garage is about 35 to 40 square metres, by way of comparison. The total plot ratio is the same as it would be for a single house, 50 per cent. It must be adaptable. It is not adapted but it must be adaptable, and that is a matter of design. There are no restrictions on occupants, so a student could live in it or a frail aged relative could live in it; it does not matter. It does not have to be pulled down after the need has passed, as is the present rule, and it cannot be subdivided under unit titles. It would be very difficult anyway, but we make sure that everyone understands that it cannot be subdivided and we put that into the code.

**MS LE COUTEUR:** Is it requiring separate car accommodation? I know that was one of the things I commented on in one of the iterations of this.

**Mr Frazer:** Yes. In many cases, if it was a frail aged relative, they would not need a space. But if it was a student they might need a small space. It could be a relative, or anybody else for that matter, who may have a car. So we have catered for that. We will wait to hear your views about that, should you have any. We did not receive very much by way of commentary on this in our various public considerations.

What was new in the exhibited version of DV306? One of the main things was new policies affecting multi-unit residential redevelopment in RZ2. So this is the preservation of the neighbourhood character in RZ2. The reason this came in was that, of the 97 submissions received on the previous version, 303, a third of them were about RZ2. We did not make any changes to RZ2 but all of these submissions said: "Why don't you make some changes to RZ2? We're hurting here. We feel that it's necessary for government to look at this, for the territory plan to be at least reviewed and possibly changed so that our quality of life is preserved." That was the essence of many of these submissions. As a consequence we framed RZ2 redevelopment provisions.

The other thing to be included was integrated housing development, and a new dwelling replacement policy which I think is of some interest. It has gathered some attention from industry for reasons that will become clear in a moment, but not from the general public, although it was spurred on by some thoughtful submissions from people in the inner north who were concerned about the future of their primary schools in particular. I will come to that in a moment.

Refinements to the building height limits are more of a technical change. It means that taller buildings in RZ3, RZ4 and RZ5 can be built slightly differently. There is a bit more flexibility with those. But not in RZ1 and RZ2; they are essentially the same. And there is a reformatted estate development code to more clearly differentiate between the planning aspects of the code. This is for new subdivisions, so it is to more

clearly differentiate between the planning aspects of looking at a subdivision design for Wright, Coombs, Casey or anywhere else, and the engineering aspects that are largely to do with TAMS.

What have we done with RZ2? I think the committee will be quite familiar with this so I will touch on it quite briefly, and I am more than happy to answer questions. There are density controls, so we actually limit the density of development in RZ2. Where a developer may have been able to build 10 small units in the past, it is likely that that same developer would only be able to build three or four largish units. In fact we do not specify the size of the units. The tendency will be that they will build large units to maximise the amount of development they have on a block.

No building can contain more than four dwellings. That is to stop large buildings—and this is in the RZ2 context; it is not RZ3 or RZ4. So it is basically on the edge or within existing and established neighbourhoods. We break up the built form by limiting the number of dwellings. Those buildings must be separated by at least four metres. The dwellings adjacent to the street must address the street. We limit consolidation of blocks so that there is a continuous frontage rather than having two blocks here and another block in another street in basically an L shape or an odd shape. We have ruled that out. And no more than four car parking spaces can be located together. They have to be broken up.

This policy, importantly, has had interim effect since June of last year. There have been various commentaries on this. Some people were taken aback. I understand that it is going quite smoothly now. Obviously people who had bought property and were ready to move on developing that property and then suddenly the rules changed would have been upset, and I fielded a couple of those calls. It is just the nature of interim effect, I am afraid. But they were able to redesign their proposals to meet the new rules. They did not have much choice, unless they had their applications in at the time. So it had interim effect, and that interim effect continues for another 12 months or so.

**MS LE COUTEUR:** Some of it does not seem to me to make a huge amount of sense, the car parking in particular. Isn't this just going to mean that we in fact have more space for driveways? You have a piece there, then a gap and then a piece there.

**Mr Frazer:** They are still limited. When these are designed, and bearing in mind that there will be fewer dwellings too, so there will be fewer car parking spaces required in any case—

**MS LE COUTEUR:** That is a different issue. You specifically said no more than four car parks together—

**Mr Frazer:** That is right.

**MS LE COUTEUR:** which means you are going to have more area servicing those car parks because they are going to be separated.

**THE CHAIR:** If you look at the drawing, if it is like that it would not cause any problems.

**MS LE COUTEUR:** Yes, I have seen the drawings but I just do not see that this is necessarily a plus.

**Mr Ponton:** It is essentially to provide additional landscape opportunities. So rather than having six or seven cars in a row, by breaking it up it provides an opportunity to put plantings in between those spaces. I take your point that it is spreading it out but visually it has less of an impact than having that expanse all together of paving and vehicles.

**THE CHAIR:** Environmentally you do not get that large expanse of cement or whatever which, when the heat comes off it, causes issues. Also it seems to me that if it is designed in a friendly way it may be easier for people to access their car park without running into their neighbour's car.

**MS LE COUTEUR:** The point is that you might have more area covered with concrete. I know it is broken up with trees but there is more of it.

**Mr Frazer:** I acknowledge that in certain circumstances the drive will be longer as a result because the car park will be further away than it otherwise would be. But the principle here was to try and keep the development in keeping with the surrounding residential. We do not have these controls to anywhere near the same extent in the RZ3 and higher order zones. Again it is a balance with respect to maintaining neighbourhood character in these RZ2 areas. One of the complaints that Mr Ponton's people received very often was that "All of these car parks are lined up in some of these developments." So that was our response.

**MS LE COUTEUR:** The same comments can be made regarding having separate blocks—that buildings containing two or more dwellings must be separated from other buildings by at least four metres. There are all of these other controls; why can't we have party walls anymore? Having less party walls does not seem to be hugely sensible.

**Mr Frazer:** It certainly rules out town houses along the frontage. Whether that would be in keeping with RZ2 is debatable. The main concern was with buildings that marched up the block, particularly where the block was not consolidated. There was one in Weetangera, from memory, where the block was narrow and at the head of a cul-de-sac. It was quite a large block and it marched up the block. They were row houses but they did not address the street; they were just addressing the internal driveway. So our designers thought that, as a consequence of that, and in response to that design, it would be better to break those up as they marched down the block. That was their response and it has been fed into our policy.

**THE CHAIR:** So that it will be more consistent with the streetscape overall; is that what you are saying?

**Mr Frazer:** Yes. In that case it is not so much the streetscape because essentially all that is seen from the street is the end unit. But from the neighbour's point of view they look over the fence and they see either a wall of a line of row houses or they see in this case buildings broken up by at least a four-metre separation. The point I made earlier was that there will be few of these dwellings anyway because of the significant

changes to densities in the RZ2. We will see how that works out. Mr Ponton is better placed to comment on the applications received over the last 12 months on those matters.

**MS LE COUTEUR:** Have you done any work on the additional costs in terms of driveway provision and in terms of energy efficiency with the more separated buildings with the new style?

**Mr Frazer:** No, but irrespective they still have to achieve the minimum six-star rating.

**MS LE COUTEUR:** But it might possibly cost them more to achieve that because you have more external walls and less party walls.

**Mr Frazer:** Yes.

**MS LE COUTEUR:** You have more material costs in doing this. You have not looked at the physical costs of doing this?

**Mr Frazer:** No. These are diagrams that Ms Porter pointed to in our fact sheets.

**Mr Ponton:** That diagram is particularly useful because in terms of the separation of the buildings it is about recognising that in a suburban context you tend not to get that row housing that you were talking about. These present to the street as a series of individual but large homes rather than three or four. That was the rationale behind that.

**Mr Frazer:** That is also the diagram in the fact sheet. It shows the consolidation of blocks. Essentially you have got to walk around the perimeter or the frontage of your block or blocks but without crossing anyone else's frontage and then it can be approved as a consolidation.

These are more technical. You can look at those. I am happy to answer questions about it but that is essentially the density constraints that I was speaking about earlier. The fact that I did not mention was that if all of the dwellings in a particular proposal are designed to be adaptable then there is a small concession for density. Some people are taking advantage of that already. Rather than one for 350 square metres it is one for 300 square metres until the threshold is reached and then it drops down a little bit more. So there is motivation for developers to prepare designs that rely on all of the units being adaptable. As I said these provisions have had interim effect and continue to have interim effect.

Building height, as I said, is largely to do with RZ3, RZ4 and RZ5. It gives a little more flexibility by introducing a criterion into the number of storeys. Our heights of buildings are fixed—they are under a rule—but we have criteria which say that you can change the number of storeys, provided you meet the criteria; in other words you can demonstrate compliance with the criteria and their aspects.

**THE CHAIR:** Could you give us an example?

**Mr Frazer:** Yes. If I was in RZ4 there is a three-storey limit at the moment. But I could design a building with four storeys which still meets the 12½ metre absolute

limit for the building. As far as the streetscape is concerned that is not going to make much difference and provided it can be shown that neighbours are not going to be affected by that and the street can adequately cater for the additional traffic, if there is any—it may just be that there is the same number of dwellings but each one of those dwellings is larger, so it does not necessarily have a traffic implication—if I can show that I can get an additional storey without really affecting the overall built form objectives of the area then I can proceed and I can make a case to the authority to have that approved. You cannot do that in RZ1 and RZ2. There is a limit of two storeys and it is fixed. There is a criterion for the overall building height, so it is possible to exceed the building height overall of 8½ metres but not the number of storeys. So there is not much motivation for developers to exceed the building height because it costs more to develop, unless they are after a particular view or some other outcome. Then again, they still have to satisfy the requirement of meeting the criteria for making a justification for that departure.

Integrated housing development is more to do with new subdivisions and allowing a subdivision of small blocks essentially that might not otherwise—they may or may not—meet the criteria for block selection. They may be, for example, narrow north-west blocks. But we give developers the opportunity to justify a series of blocks that look a bit like that, for instance, on the basis that they provide the authority with the designs of the buildings—not just the subdivision but a design of the buildings—at subdivision stage. Then we can determine whether there is going to be sufficient sunlit open space and whether the designs are going to provide sufficient residential amenity for those people when they are built. In that way these integrated housing developments can still allow for single dwellings but in an integrated way. Typically a builder will come in and build five or six of them in a row and then sell them individually on separate blocks; they just happen to have party walls.

If we did not do this they would be heavily constrained in what those combinations of blocks could be because the solar envelope comes into play. As you know, if they are east-west blocks it starts at 1.8 metres. So it really rules out row housing on individual blocks. The industry encouraged us to look at this very carefully because they were concerned they were going to rule out some of their product. We have come back with this proposal and we think it covers it.

**MR COE:** They would not be titled as unit titles either?

**Mr Frazer:** No, not in this case. They would be individual blocks. The funny thing is that you could have multi-unit housing, unit title, that would look exactly the same. But of course there is a different arrangement. They are dealt with at DA stage when the whole development comes in as one development.

**MS LE COUTEUR:** Is that an actual party wall? I remember going to a presentation about developments in Wright from somebody from the LDA and they were suggesting there were going to be a lot of things with a very tiny gap between the two. I was not able to understand why we were doing this. It just seemed like something that would get full of junk—real rubbish. Are you doing anything to encourage infinitesimal spaces between party walls? It seems ridiculous to an outsider.

**Mr Frazer:** No.

**MS LE COUTEUR:** So this will be a real-life party wall, and if I lived next door I would have to work it out with my neighbour if the wall starts to collapse, there is a leak or heavy rock music every night has destroyed the wall?

**Mr Frazer:** That is right. It depends how these are developed. We do not encourage it but we do not rule out the option of each of these blocks being sold separately and of an individual owner coming and building their house on that block. Of course they have to build precisely in line with the rules and limitations on that that are included in the suburb precinct code. So it is not a free-for-all. There are examples of it, although with some constraints. First Edition in Kingston is one of those examples. They are larger blocks but they have the same principle. In fact they were bought separately and there is about this much gap between them. They are covered over because otherwise cats, rats and things get in there. A competent builder will cover those over to make sure that that sort of thing is reduced. But they are separated by a gap of about that much, and that could happen under our integrated housing development. As I said before, mostly one builder comes in and obtains six or seven of them and just builds a whole row of them. In that case there is no gap.

**MS LE COUTEUR:** It is a real party wall?

**Mr Frazer:** That is right.

**MS LE COUTEUR:** Are there requirements for sound insulation?

**Mr Frazer:** Yes, under the BCA, because they are separate dwellings. So noise and vibration are controlled in that regard. You should not be able to hear a thing. That is a BCA requirement.

That red line there, that very badly drawn diagram, shows what we call an integrated housing development parcel. That parcel has to behave in the neighbourhood as any other block would. In fact it cannot overshadow the neighbour to the west, the east, the north or whatever. Otherwise internally it meets the rules that are set down in the precinct code. That is a real-life example. In Crace they are separate blocks. One or two of them are 4½ metres wide. So it is possible to have a very small block in this sort of setting.

With respect to the dwelling replacement policy, you may hear a little more about this from people who are likely to give evidence about it, from industry particularly. This says in a nutshell that if you are developing where there are single-dwelling houses now, let us say in O'Connor, and you purchase three or four blocks—it does not have to be RZ2; it can be RZ3 or RZ4—and you demolish those three houses on those three blocks, consolidate the block and build multi-unit housing, which you are entitled to do—that is what the territory plan allows you to do—then no less than three of those dwellings that you ultimately build have to be three or more bedrooms. In other words for every house you knock down, you have to provide a three or more bedroom house in your complex.

**MS LE COUTEUR:** That is slightly different from what you have got written there, which is that it must contain as many three or more bedroom dwellings as the number

of blocks consolidated. Of course in the existing suburbs there are quite a number of two-bedroom houses. A lot of the early housing was two bedroom.

**Mr Frazer:** That is true, but so that we are not caught up with—and this is from an administrative point of view, more than anything—deciding whether this had two bedrooms, one bedroom and a study or one bedroom and a home theatre or whatever, we have kept it simple.

**MS LE COUTEUR:** Maybe you should write that—at least one three-bedroom dwelling for each block consolidated.

**Mr Frazer:** Yes.

**MS LE COUTEUR:** They are two different constructs and they do not necessarily lead to the same results. I personally do not think that is a good rule but at least you should be clear about what the rule is.

**Mr Frazer:** The rule in the code is probably clearer. If it is not then it is my responsibility.

**MS LE COUTEUR:** I think it is. I do not think that is a correct paraphrasing of it.

**Mr Frazer:** That is a good point, thank you. The idea behind this policy is to retain family accommodation in redevelopment areas such as the inner north, maybe the inner south.

**THE CHAIR:** Dwelling replacement?

**Mr Frazer:** Dwelling replacement. This brings us almost to the present and the public consultation on 306 that occurred last year, between June and September. Seventy-six new submissions were received.

**THE CHAIR:** When you say new, do you mean these are totally new or were they just some put in by the same people but orientated differently?

**Mr Frazer:** No, we gave the opportunity to people, if their concerns remained the same, to say, “Please refer to my earlier submission.” But people took the time and the effort to make new submissions.

**THE CHAIR:** So some of these are from the same people making submissions?

**Mr Frazer:** They could well be, that is right. But there could be different—

**THE CHAIR:** But they are different submissions?

**Mr Frazer:** Yes.

**THE CHAIR:** Not 76 brand-new people?

**Mr Frazer:** No. There may have been a few new ones but many are the same.

**MS LE COUTEUR:** I think it is a hard core of people.

**THE CHAIR:** I am just checking.

**Mr Frazer:** The report on the public consultation was prepared as a result, and that is now publicly available. It is in your information pack. This document, which is now publicly available, summarises the issues raised in submissions. We are not called on, by the way, to make responses to those issues. We have chosen to but under the legislation it is for the minister to have a summary, presumably, of the issues that are raised. But where those are key issues we have responded to them. You will see that in the report. I apologise for it being so lengthy. If you suffer from insomnia it is the perfect cure!

What changes have we made in response to those 76 submissions that we received on 306? In fact not very many. We received submissions, and forceful submissions, about the RZ2 policy, for example, but we had forceful submissions on one side and forceful submissions on the other, so we figured that we must be doing something right as we were about in the middle. Whether that is the correct judgement or not is for others to determine. But that is why we made no changes to RZ2—because we had a polarisation of views. In the same way very many of the other key considerations were in a similar vein.

There were some things that stood out, and these involved the minimum sunlight penetration rules that were discarded in 306, and in 303 before that, which say that in any development, any house or multi-unit dwelling, you must have at least three hours of sunlight during the day on the winter solstice. It can only be a little bit but it has to have something coming into a living area, presumably from a window or a skylight, and hit your floor in your living area for three hours on that day. A lot of people thought that was a really good idea. Apart from the fact that we have some more solar aspects to do with a neighbour, this is more to do with the house itself, your house. So we have reintroduced that and it applies in exactly the same way as it does currently; that is, it applies to all single and multi-unit housing. But for multi-units only 70 per cent of the units have to comply; otherwise we would rule out south-facing units in apartment blocks. They simply cannot comply.

**MS LE COUTEUR:** You have just put it in exactly as is?

**Mr Frazer:** Basically, that is right.

**MS LE COUTEUR:** The suggestion in my submission was that you kept the exemption for multi but the ones which did not get sunlight should have higher energy efficiency. So if you did not have the sun at least you were warm, basically; you did not get the total loser of an apartment.

**Mr Frazer:** I think it is fair to say that the energy ratings for apartments have gone up.

**MS LE COUTEUR:** The issue is the minimum. It used to be a three-star minimum.

**Mr Ponton:** It was three stars, with an average of—

**MS LE COUTEUR:** It used to be three with an average of five.

**Mr Frazer:** I think a minimum of five and an average of six, or the other way round.

**THE CHAIR:** This is what it used to be?

**Mr Frazer:** No, that is currently. The BCA requirements are quite onerous as far as energy efficiency for apartments is concerned.

**THE CHAIR:** We had better make sure we know what it is.

**Mr Frazer:** Yes.

**MS LE COUTEUR:** I think it would be a minimum of five and an average of six.

**Mr Frazer:** I have got it somewhere. It is five and six.

**MS LE COUTEUR:** It has to be a minimum of five, whereas I was saying you should make sure that the unit that does not get the sun is not also the five-star one, so that you do not have an absolute loser of an apartment. Put some insulation into that one.

**THE CHAIR:** You will get that information back to us and clarify which it is, yes?

**Mr Frazer:** Yes indeed. With respect to design character, essentially this came from submissions about neighbourhood plans. I am sure you would be familiar with some of the thoughts about neighbourhood plans that have been floating around for the last little while. Under 306 and the residential codes neighbourhood plans are not mentioned, but they still have a role to play and we think that role is in identifying design character. It is projecting character into the future: what do we want this place to look like in the future, after it is redeveloped? In Reid the design character will be the same as it is today but in O'Connor or Turner the desired character is something else. It is three-storey walk-ups or even four-storey buildings.

When 306 was published the definition of desired character was simply that you take an understanding of what the desired character of your area is, or your zone in particular, from looking at the zone objectives. But we have gone one step further now and we have said that zone objectives are important but there is one other thing—that is, whatever the precinct code says is the desired character. So I envisage that for Yarralumla, for example, or Griffith or any suburb for that matter but particularly those suburbs that have neighbourhood plans, we will go into the neighbourhood plan and extract the important components of the neighbourhood plan which talk about desired character, about what the neighbourhood, the community, would like to see. And we will turn that in the appropriate way into a statement of desired character. That will have to be taken into account in the assessment of a development application. But I must say that it is only in the assessment of a development application that there is a departure from the rule. That is the only time because desired character is not a rule; it is a component of criteria.

Let us say, for example, that with our front boundary setback the rule is six metres but someone comes in with this idea: “I’d like to have a five-metre front boundary setback for my house.” That is all fine but that is evaluated against the criteria. And among the evaluation points in the criteria is the desired character. So the assessing officer has to decide what the desired character is and they would look at the zone objectives and, if it is in Griffith, they would look at the statement of desired character that is in the Griffith precinct code. That is our plan.

**MR COE:** So if an area does not have a neighbourhood plan do you envisage that ACTPLA would determine desired character through another means or would they simply not have desired character?

**Mr Frazer:** They would not initially but we are getting to the point where we will have a precinct code for every suburb. So if the local community decided that they would like a statement built into their precinct code then they could approach the authority. We have a list of work. In theory we could have a statement of desired character for every suburb in the city, ultimately. Some are easier than others because the work has already been done.

**MS LE COUTEUR:** The work has already been done in most cases. That was done at least 10 years ago. With many suburbs if you were to redo it you would find some quite different ideas as to what they would like in their suburbs compared to what they wanted 10 years ago. To a large extent it is going to be a different bunch of people. I think you would say that overall views about density have changed in Canberra in the last 10 years.

**Mr Ponton:** Interestingly—Mr Frazer, you might confirm this or otherwise—in the submissions that we were receiving we were getting commentary from the community saying, “We went through this process of neighbourhood planning; we want that recognised in some way.” That is why we have gone to this depth of incorporating the references to desired character as outlined in the neighbourhood plans, so that that work is not lost. But you are quite right: over time it will be necessary for us to revisit that, being mindful of other government priorities.

**MS LE COUTEUR:** We do not want to freeze suburbs into 2002-03 terms. That is almost sounding like what you are thinking of. That was the last time that neighbourhood plans were done.

**Mr Frazer:** They will need to be refined. They will need to be looked at critically. I was careful not to say that we will just take the statement out and put it into the precinct code. There will be some refinement needed. There is likely to be some public consultation on that sort of thing as well, because the neighbourhood plans do not have any statutory force.

**THE CHAIR:** I think that is something that we definitely need to explore a bit further, that particular issue around neighbourhood plans, how old they are, who will need to be consulted and how the character may have changed in any given area.

**Mr Frazer:** I dare say that you will hear from people with a view about neighbourhood plans.

**MR COE:** Some could say that if the character has changed it is because the neighbourhood plan was not adhered to.

**THE CHAIR:** It may be a circular argument; indeed.

**MS LE COUTEUR:** Some people say otherwise, that it has not changed, and some of the neighbourhood plans would have envisaged some change, or they were not there 10 years ago and they do not agree with what was there.

**MR COE:** It will be a colourful conversation.

**MS LE COUTEUR:** It will be a significant conversation.

**Mr Frazer:** Other changes were made because we had the chance to reflect on DV306. These are largely changes in the way that the rules are implemented rather than the substance of the rules. As far as compliance is concerned we have introduced a test block, which just makes it easier to see compliance, particularly with odd-shaped blocks in new estates. I am happy to go through this procedure with you. It is more of a technical nature.

Formatting and editorial changes: we took the chance to look at that closely and correct mistakes that are almost inevitable in about 400 provisions. They are detailed in the explanatory statement.

I have some more information about residential zones in the broad but I am happy to leave that for another occasion and field questions. We have covered the bases that we had set down on the agenda.

**THE CHAIR:** We need to deal with some quick questions now. I know that you only agreed to be here until one and I know members only agreed to be here until one. Are there any quick questions?

**MR COE:** I have no questions.

**MS LE COUTEUR:** I am right for now.

**THE CHAIR:** We can reflect on this material. We will organise some time for you to come back for a third go. We might need another catch-up from the two briefings, if that makes sense.

**Mr Frazer:** Yes.

**THE CHAIR:** Certainly it has been very informative. Thank you very much.

**The committee adjourned at 12.59 pm.**