



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, 24 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.

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Amended 9 August 2011

The committee met at 8.32 am.

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: Good morning and welcome to this private briefing, Mr Ponton and Mr Frazer. Thank you very much for attending today and assisting us with this process in the inquiry into draft variation No 306. We will proceed in the same way we did previously with you doing the explanations and us asking questions as we go along. If we have time for questions afterwards, we can do that, too.

Mr Ponton: Mr Frazer has another presentation for you that covers off some of the issues that we received back from the secretary that we understand to be of interest to the committee. Bruce will cover off those and some other items in addition.

THE CHAIR: I note that we have with us Michael, who is a research officer assisting us with this process. You have met Andrew before, who is standing in for our secretary at the moment, who is unwell.

Mr Frazer: Members of the committee, we are carrying on from whence we left last time.

A PowerPoint presentation was then made—

Mr Frazer: A lot of the key issues we covered in our briefing last time, but these are the matters that were raised in particular. Some of the committee members had particular interest in the reactions of the reference group, so I can explain the background of the reference group.

What has changed between this version and the previous versions is something we touched on last week, but we can cover that again if you like. There is also the structure of the variation. That is a key question from my perspective because that is one of the key reasons why we are doing what we are doing with 306 and with other restructuring in the territory plan to make it more user friendly. But let me go through that, with your indulgence.

What was the role of the reference group? I say “was” because the reference group was initiated by the former planning minister to assist in the transition between 301 and 303, or really to answer the question of what we should do with 301 and 303 after the public had its say on its content. So the minister decided then to bring together as parties the former committee to advise him and ACTPLA, as it was then, on the way forward.

Essentially, the 2010 reference group was established by the minister and comprised representatives of community groups, professional associations and the housing and construction industry. So it was quite a balanced group. There was no expectation of consensus really because there were too many parties. However, they did a very good job, I think, in bringing together all the various strands of 301 and 303 and making

some recommendations that were worthy.

It reported to the minister on 17 January of last year, and the report is now made publicly available with the information pack.

MS LE COUTEUR: Why was it not more publicly available before?

Mr Frazer: It was not thought necessary to be made public at that stage, and no-one really called for it.

MS LE COUTEUR: I asked for it many times and was refused.

Mr Frazer: All right.

MS LE COUTEUR: I asked the minister. I do not get to ask you guys.

Mr Frazer: Yes.

MS LE COUTEUR: I had assumed that there was something much more controversial in it, because it was repeatedly refused.

Mr Frazer: All right. I cannot comment very much on that. There were a number of recommendations, but the key recommendations were that 301 and 303 would be withdrawn and that, essentially, those components of 301 and 303 be re-released as a new omnibus draft variation, although there was some discussion about how large it was going to be. Obviously, those that were concerned about it being large were right; it is a very large document. Nonetheless, the public had exposure to it in two forms before.

The third key recommendation was that ACTPLA give consideration to the public consultation approach beyond that required by the act. That was good advice, and we took that advice. That is one of that reasons that those information sheets were assembled—about 10 of them—and we got some good, positive response from that. That has really set the scene. Although we had done similar releases of public information in the past, this has set us on a certain path that I think is of assistance to the public, because the public come at it fairly cold and we try to dejargonise the whole matter.

The difficulty with these technical documents is just that—they are technical documents. They are used for applicants and for the tribunal when it is considering applications, so they have to be of a technical nature. It is not like a novel, as such, so we need to make it as clear as we possibly can within our constraints.

I will go on to the second matter that you raised, unless you would like to ask questions about that.

THE CHAIR: Do members have questions? No. Carry on.

Mr Frazer: The code structure looks something like this. This is not the whole of the territory plan structure. As far as 306 is concerned it fits largely into this pattern of

development. The territory plan is the overriding document, of course, and under that we have the three branches or groups of codes that are involved in 306. So we have the residential zones development code on the left-hand side and under that a single dwelling housing code and the multi-unit housing development code.

It is important to look at that structure because it is based on how an applicant would want to use the system. So we try to put ourselves in the shoes of an applicant because the applicant is the principal person. The technicians can get around this type of structure but from an applicant's perspective we need to make it as clear as possible. So the applicant starts with the residential zones development code, on the understanding that the applicant knows a few things. They know firstly where their property is and secondly what zone the property is in, and that can be found from ACTMAPi; that is not really hard to discern. And they will of course know what their proposal is, which we do not know but they do.

With those things together, they would first go to the residential zones development code. Early in the code it anticipates that very many of the applicants in the residential zones will want to do one of two things. They will want to build a single house or they will want to build a multi-unit housing development. Some others will want to do things like a home business, for example, or a childcare centre, which is permissible in the zone. That would go to other parts of the residential zones development code, where it has non-residential uses of sorts. But essentially this code would then direct most applicants to either the single dwelling housing development code, which is a stand-alone code, or the multi-unit housing development code, which is also a stand-alone code.

Coupled with that are precinct codes. We are just expanding the number of precinct codes that we have. Precinct codes are at a higher level but they generally cover a smaller area. So let us say that my proposal was in Griffith and I wanted to build multi-unit housing in Griffith. I would first go to the residential zones development code, and that would direct me immediately to the multi-unit housing development code. But the introduction to both of those codes would remind me that not all the information is to be found in these high order, high level codes; that you will also need to look at your divisional or suburban precinct code.

From an applicant's point of view they have to look at basically one code of a general nature and then make sure that they have covered, in this case, the Griffith precinct code. And the Griffith precinct code will contain whatever particular requirements there might be for that block. So in Griffith I might be in a block which has particular site constraints or site arrangements like particular or special building heights, special setbacks; in some cases in suburban areas it may well be that it is a bushfire-prone block or it has an elevated bushfire risk or it might be on a main road and therefore subject to external noise. We mark all of these particular parameters that apply to each specific block or parcel on a precinct code. Because we are doing the commercial zones, we are proceeding to have a suite of precinct codes that will cover pretty much every suburb in the city, and that will be about 110 or so. That includes existing and new suburbs.

MS LE COUTEUR: Can you go through how precinct codes are notified for public consultation? I am a bit vague on that.

Mr Frazer: Ms Le Couteur, if we started from scratch and were producing a new precinct for, say, the suburb of Griffith, where there was no other information for it before at all—they were not lingering in development tables or in other codes; I will explain what I mean by that in a moment—a full planning variation would be required to initiate a precinct code.

MS LE COUTEUR: A full territory plan variation?

Mr Frazer: To prepare a precinct code. That does not often happen; it rarely happens. The majority of precinct codes started life with DV302, which was the community facility zone code. That was a full plan variation.

MS LE COUTEUR: Twenty or 30—

Mr Frazer: That is right; there were very many of them. There was a provision in that particular draft variation which essentially prohibited residential development on certain selected community facility sites to preserve them for potential community facilities rather than for residential. So that was the policy implication. The way that was initiated was that those blocks were identified in a number of precinct codes. In the Griffith precinct code there was a block of community facilities identified as being not available for residential use. So that was the genesis of precinct codes.

With new areas like the suburb of Crace, for example, when the estate development plan is lodged and approved—and that is essentially the subdivision—it does two things. It establishes the subdivision, the blocks, the roads and the infrastructure, and it also isolates and identifies the future zoning. So that information is taken and the process of putting that information on roads, blocks and so on and of the future final zones is a process that we call “uplift”. We uplift the information from the approved estate development plan, which has gone through a public consultation process, and we uplift that into the territory plan under a technical amendment. And that is a different process.

MS LE COUTEUR: Does that then become a precinct code?

Mr Frazer: Yes, it does. The precinct code is formed at the same time. It may only be part of a suburb to start with. In Crace, for example, there are a number of stages. The first stage then was uplifted into the new Crace precinct code and the next stage—it could have been two years after that—was approved and that information was then uplifted into the same precinct code. So the precinct codes build on each other, most of them through technical variations.

MS LE COUTEUR: I live in Downer. I know there is already a precinct code because 302 produced one. How is that varied? Is there any public involvement in that? How does that happen?

Mr Frazer: Downer could be a good example because from memory it is on my list. We are doing a commercial codes review at the moment.

MS LE COUTEUR: There has been consultation for about the last 15 years about

what is going to happen to the centre of Downer. Every year we have consultation, so it is undoubtedly on your list.

Mr Frazer: Right. Let me take you to somewhere that is similar. Let us go to Dickson. I am more familiar with that because that is a master planning process and that had a lot of public consultation, as you are aware. The master plan is all well and good but it has no statutory force. So there has to be a way of migrating the policy initiatives that are agreed to in the master plan into the territory plan. That is where the Dickson precinct code comes into play. Ultimately the Dickson precinct code will have information about the Dickson group centre. But more than that, it will also have information in other areas of Dickson about community facilities land, if there is any; it will have particular provisions about multi-unit housing, if there is any; it will have some information about what parcels and what uses are in the merit track and what are prohibited and that come from the development codes that are in another part of the territory plan.

MS LE COUTEUR: Is there a specific public notification of the precinct code? The master plan was some time ago and I do not think many people appreciated—I certainly did not realise—that we were consulting on creating a precinct code. Maybe it should have been obvious but I do not think it was. The Dickson master plan was only a small part of Dickson. The rest of Dickson was specifically not included in that consultation but it would be included in a precinct code. How does—

THE CHAIR: Not necessarily, I do not think.

MS LE COUTEUR: Mr Frazer just said that it would include the other parts of Dickson.

Mr Frazer: Yes. What I left out, of course, was that in relation to the Dickson group centre plan, those elements that are going into the territory plan will go through a public process because when all that is finalised it will be a full plan variation to create the Dickson group centre precinct code. What we are hoping will happen is that it will create the Dickson precinct code or be included in the Dickson precinct code overall. I suppose my message is—and I am not being very clear about this—anything new and substantial has to go through a plan variation process, with public consultation.

MS LE COUTEUR: Any substantive change in a precinct code would be a full territory plan variation. That is what I am trying to work out. The precinct code so far was an appendix to 302. Most people would have no idea the suburb had a precinct code. I am not 100 per cent sure but they probably had no idea there was a full territory plan variation. They were not very substantive changes. I do not think that was a particular problem. People were not particularly aware of what was happening. I am trying to check that there was going to be some better process than that in general.

THE CHAIR: For the Hansard record, you need to notify which slide you are on. They need to know the number. Could you say what number this one is, if you know?

Mr Frazer: Yes. It is No 6.

MS LE COUTEUR: It is right down there at the bottom.

THE CHAIR: I can see it now. Are we going onto slide No 7 now?

Mr Frazer: Yes, we will. That is essentially the format of the territory plan as it emerges from our long review. Commercial zones will fit into the same pattern. We want some consistency throughout.

THE CHAIR: Now slide No 7.

Mr Frazer: You asked last week about confirming it. I think Ms Le Couteur had similar questions about the energy rating. Ms Le Couteur was right. Currently the Building Code of Australia requires that class 1 buildings, which are detached housing and some multi-unit housing of a small scale, have a six-star energy rating. When we get to class 2 buildings, which are largely apartment buildings, then on average it is six stars and no dwelling to have fewer than five stars or the equivalent. They keep on calling it “equivalent” because the star system is a proprietary system. That is why they always talk about equivalent to.

I should say that the reason, essentially, why the territory plan does not delve into energy efficiency ratings—it used to; when I started here in the ACT there was a section in the territory plan that looked at that and referred to the star rating for dwellings, and that was above and beyond BCA—is that over the last five years or so, I suppose, our organisation has made a clear distinction between building matters and planning matters. So you will not find building matters in the territory plan. It has not done so for a while. Energy ratings are a BCA matter, first and foremost.

THE CHAIR: I am sorry to keep on about these slide numbers but they are very important. That is slide No 8 that we are looking at now?

Mr Frazer: It is slide No 8. That is right.

MR COE: When the territory plan used to make reference to energy ratings, did it actually lock in a number as a minimum?

Mr Frazer: It did.

MR COE: In which case, you run the risk of it becoming outdated quite quickly?

Mr Frazer: That was one of the issues. I think at that stage it was four stars and the BCA was three stars. I am not exactly sure but there was a differential between the two. The building industry then had to look at the BCA. Of course they are obliged to comply with the BCA no matter what. Then they also had the territory plan that came in over the top. So there was a little uncertainty about that. It put us out of kilter with the rest of the nation as far as the BCA was concerned. That was one of the reasons. I cannot speak definitively about the reasoning behind it.

Mr Ponton: The other reason related to what was being done at the national level to try to have a demarcation line between what is planning and what is building. The star

rating, essentially, relates to the building. There was confusion. You cannot really get a good understanding of how a building is working until it is built. That is why it is important to deal with that at the building application stage. That can be confirmed once the building has been constructed.

Mr Frazer: In slide 9, the question is simply about the proposed zone objectives. It expresses the differences between the zones. We got quite a bit of public comment on the zone objectives and what they should or should not be.

If I can run through the key parts of those zone objectives, they were not changed greatly but they were massaged. They were brought up to date. They were certainly looked at very carefully. Some of the wording was changed. In some important ways, it was changed.

THE CHAIR: That is slide 10?

Mr Frazer: Yes, this is slide 10. These are the objectives that are common to all residential zones. I am not sure that anyone would dispute them. They really are of a general and high-level nature about what should be provided and what should be achieved in residential zones.

What I think would be of more interest to the committee is, on slide 12, the differences between RZ1 and RZ2. I think this attracted most commentary from members of the public on DV306. RZ1 and RZ2 are different even though they are in the same area.

As you would appreciate, RZ1 covers the bulk of the residential areas in the city, essentially. RZ2 came out of the garden city variation, essentially, and identified those areas around local or group centres, mainly local centres, which had the capacity for higher density around the services and public infrastructure that was provided. The zone objectives should identify those differences. RZ1 essentially provides for the establishment and maintenance of residential areas where the housing is low rise and predominantly single dwelling.

In contrast to that—and there is a subtle contrast—RZ2 provides for the establishment and maintenance of residential areas where the housing is low rise and contains a mix of single dwelling and multi-unit development. The important thing there is that it is qualified by the fact that it should be low to medium density in character, particularly in areas close to facilities and services in commercial centres.

MS LE COUTEUR: Given that, why is the plot ratio higher for RZ1 than the multi-units in RZ2?

Mr Frazer RZ2 multi-units are only for dual occupancies. It is 35 per cent on a sliding scale. That is the only anomaly, and that anomaly came from the Lansdown report essentially. It has been maintained as a sliding scale. In fact, it started out as a 35 per cent plot ratio in the early 1990s, but with the garden city variation it went through a process, and that is when the sliding scale came into force. That meant that for a 700 square metre block it was 35 per cent plot ratio, but on larger blocks, say, 1,500 square metres, it might have been down to about 31 or 30 per cent. So that was

an innovation from 2002. But dual occupancy was the anomaly. For other multi-unit housing in RZ2, the plot ratio is 50 per cent, which is the same as RZ1.

MS LE COUTEUR: It is hard to see why you would characterise it as in any way higher density than RZ1, because it is the same.

Mr Frazer That is right.

MS LE COUTEUR: Certainly we are seeing with knock down-rebuilds that people are building RZ residences to 50 per cent.

Mr Frazer They are. In some cases physical residences were not caught up with the Lansdown for plot ratio. So the curious circumstances arose, as you quite rightly point out, where there are two identical blocks side by side and one has a house at 50 per cent plot ratio and the other has a dual occupancy at 35 or lower plot ratio.

MS LE COUTEUR: Yes, it is crazy.

Mr Frazer Yes, but it is a feature of the territory plan.

MS LE COUTEUR: I appreciate it is legal, but it is crazy.

Mr Frazer We did not address that in this particular plan variation because that was pretty much handled in the garden city variation back in 2002.

Slide 13 goes on to highlight the difference between RZ1 and RZ2. This is probably the important one from my perspective—that is, RZ1 is designed to protect the character of established, single-dwelling housing areas—that is important—by limiting the extent of change that can occur, particularly with regard to the original pattern of subdivision.

RZ1 does not rule out multi-unit housing, and there are examples that are being created now and there are examples throughout the whole city of multi-unit housing on RZ1. RZ1 is not necessarily single-dwelling housing. But this reinforces the fact that once the pattern of subdivision and development is established in Griffith or in Reid or anywhere else for that matter in established areas, then it is pretty much locked in after that. So a multi-unit housing site remains a multi-unit housing site, but, more importantly, single-dwelling housing sites, rows of them, are also locked in.

If you look at the controls over subdivision and consolidation of blocks in RZ1, they are very restrictive indeed. In fact, you cannot subdivide an RZ1 block and you cannot consolidate RZ1 blocks except for one instance, and that is for supportive housing. That is largely government housing. It is very restrictive, but it is restrictive for a purpose—that is, to protect the established pattern of subdivision in the RZ1 areas. That is the bulk of our residential areas in the city.

RZ2 by comparison is similar. It provides opportunities for redevelopment by enabling a limited extent of change—so “limited extent of change” is the key there—with regard to the original pattern of subdivision and the density of dwellings. You will recall from last week at our briefing we talked about consolidation of blocks in

RZ2 for the purposed of multi-unit housing. We have limited the extent of that consolidation and we have limited the number of dwellings that can be developed through new controls over density and building bulk and form. That is, indeed, trying to fit in with this objective. The objectives and the controls should be hand in glove.

Essentially that is very similar. These are the other objectives that are in contrast on slide 14 between RZ1 and RZ2. This is essentially a repeat of what we were looking at but just in a little more detail. RZ2, because of its location, the key objective there is to contribute to the support and efficient use of existing social and physical infrastructure. That is already provided in these centres, and that is why RZ2 was chosen.

Slide 15 shows the different objectives that relate to RZ3, RZ4 and RZ5. If you would like me to go through those, I am happy to. There are only subtle differences between the higher order residential zones

THE CHAIR: You can keep going.

Mr Frazer We had a number of comments about desired character, and the overall question is: what is “desired character”? “Desired character” is a term that you can find in the residential zones, particularly in multi-unit but also in the single residential.

THE CHAIR: That was slide 16, and this is slide 17.

Mr Frazer Yes. Slide 17 is the definition of “desired character” that is now found in 306. As a consequence of or in response to public submissions, we have added a statement into the definition of “desired character” and, indirectly, this calls up neighbourhood plans. It does not actually talk about neighbourhood plans, but it does call them up indirectly. Let me explain.

The first part of “desired character” means the form and development in terms of siting, building bulk and scale and the nature of the resulting streetscape that is consistent with the relevant zone objectives. The next phrase has been added: “and any statement of desired character in a relevant precinct code.” We touched on this in the briefing last week as you recall, Ms Porter. The role of the neighbourhood plans, those that have statements of desired character, can be then transferred into a precinct code, and then that will become the basis of what “desired character” means in its definition under the territory plan.

That is all well and good, but how is it used? This is typical of how “desired character” is used. There is a rule—in this case, the number of storeys in RZ4. Like any other rule and criteria in the codes throughout, if the applicant meets the rule, then no further correspondence is entered into. Basically a tick is given to that particular part of the proposal. So in this case, in RZ4, the maximum number of storeys is three. However, if an applicant has a desire to go beyond that, obviously to four storeys, then that is where the criteria on the right-hand side come into play. The criteria are there solely to determine whether any departure from the rule is worthy.

The applicant must demonstrate that the variation—in other words, this four-storey component of the building—is worthy by justifying the proposed change on the basis

of its compliance with this criteria. In this case, the first thing that you will see there is that the applicant needs to establish that this building is consistent with the desired character. The “desired character” is essentially reflected in the zone objectives. In this case, it would be the zone objectives for RZ4. But if this proposal for a departure was in RZ2, for example, then the zone character as identified in the description of the desired character in the precinct code would also come into play.

So for the desired character, depending on where this is, the applicant and the assessing officer would look at the precinct code, and if there is a statement of desired character in the precinct code—this area is low rise, for example, probably only two storeys with large front verges and so on—that would be taken into account in this process.

THE CHAIR: There are no questions on slide 18, so you can go on to the next one.

Mr Frazer: Slide 19 asks the question: what sort of development can be expected in residential zones? This is another query that we had, not so much in the public consultation and the submissions, but certainly as we travelled about with community groups and local community councils we had this question very often.

Slide 20 is essentially a photograph of a single dwelling. Single and dual occupancy residential development is permissible in all zones. In some zones that is a bit of a rarity; in RZ5, for example, we are not expecting too many single residential. But it is permissible; you can buy a block in RZ5 or buy a lease in RZ5 and develop it as a single dwelling residential.

Slide 21 identifies the fact that two-storey apartments can be built in RZ1, RZ3, RZ4 and RZ5, so it is the three higher order zones, RZ3, RZ4 and RZ5, but importantly it is in RZ1, but only if the pattern of development is established at the subdivision stage and those blocks available for apartment development are identified at the subdivision stage. It cannot be done later; it is not possible to develop RZ1 blocks that were not identified at the subdivision stage for apartment dwellings, certainly in RZ1. You will see that RZ2 is missing from the list altogether. It is not possible to have apartments in RZ2 under any circumstances.

MR COE: At subdivision stage what would be the advantage of calling a block RZ1 if there was perhaps an intention to have apartments on it? Wouldn't it be clearer if it was just RZ3 or RZ4?

Mr Frazer: Yes, Mr Coe; that does happen. In Molonglo, for example, there are two or three zones that are used. Essentially there are RZ1 and RZ5 and in certain circumstances there is RZ4 as well. But there is a big contrast between RZ5, which could be four, up to six, storeys in height, obviously in apartments, and RZ1. For example, all of the suburb of Wright essentially, except for a string of blocks along the main road, along John Gorton Drive, is RZ1. But it is possible that a block within that RZ1 could be identified as multi-unit housing.

The question has arisen in many forums: why not identify that as RZ3, RZ4? I think the answer is that it does not need to be, because of the protections afforded the surrounding blocks later on. There is no confusion, or should not be any confusion,

about the future of that land; it will be multi-unit housing in RZ1 up to a limit that is imposed at the subdivision stage and is included in the lease very often—maximum of eight units or 10 units or whatever it happens to be—and there is no chance of any confusion by the neighbours. They know exactly what is going to happen on that block and the fact that it will remain multi-unit housing most probably.

Importantly, they also realise that their RZ1 block, because it was created as a single dwelling house block, a single dwelling unit block, will be protected under the RZ1 provisions, so there is no chance of the neighbour buying up two or three blocks, consolidating those blocks and building multi-unit housing.

MR COE: If someone was looking at a plan, though, and they saw that that section was all shaded as RZ1 it would be reasonable to expect that someone buying a block would think that it is going to be for standard residential houses.

Mr Frazer: Yes. It is a problem not so much for people who have been in Canberra a long time but certainly those who are used to systems elsewhere, in New South Wales, for example: 2A is 2A and 2B is something else. But in our system it has been so since the inception of the territory plan in the early 90s that RZ1—it was not called RZ1 then but essentially it was the same thing—catered for a wide range. It is a difference of philosophy. It has certainly been put to us that it should change, that we should identify those blocks perhaps at the subdivision stage for that purpose, and there is some merit in that. But we have maintained the practice of allowing RZ1 to remain as RZ1 and that will be the case in Molonglo.

MR COE: So if I was in Molonglo and I was going to buy a block of land and I chose a block and a section how would I know whether next door or two doors up is RZ1 with the capacity to be apartments?

Mr Ponton: The subdivision stage: Mr Frazer was talking earlier about uplifting the EDP outcomes into precinct code, so in Molonglo, for example, the suburb of Wright, there is a precinct code and the multi-unit housing blocks in RZ1 are identified in the precinct code, so theoretically a person buying a block of land would have the information before them, the zoning map, the subdivision plan and the precinct code, and that would identify the multi-unit block as well as bushfire requirements and other particular matters for individual blocks.

MR COE: That would usually be just for your block rather than the neighbour or two doors up. A real estate agent would be right in saying, “All your neighbours are going to be RZ1” and that would be true. The real estate agent may very well think that RZ1 is just going to be standard residential dwellings.

Mr Ponton: It is certainly possible and we would welcome the views of the committee as it considers this matter further.

THE CHAIR: I think we need to make particular note of that for discussion later. Are you happy to move on now to slide 22?

Mr Frazer: Slide 22 is similar to the first slide in this series in that row housing is permissible in all residential zones. Row housing can take a variety of forms but you

will see in RZ1, for example, row housing in the suburb of Crace where each block is separately owned, but there are other areas where it might be multi-unit housing. It looks the same but—

MS LE COUTEUR: But only to a limited extent in RZ2 was the discussion we had last week.

Mr Frazer: That is right—very limited. It certainly is possible but, as you pointed out, that sort of development that you see on the slide would not be permissible in RZ2 under the present rules because of the need to break up the buildings to have that form of separation.

MS LE COUTEUR: That is RZ1—

Mr Frazer: That is RZ1.

MS LE COUTEUR: Permissible in RZ1.

Mr Ponton: It relates too to the fact that RZ2 is really about redevelopment whereas in this example in Crace it was the first subdivision so it was quite reasonable; people knew what they were getting, neighbours knew what they were getting in terms of this type of development. With RZ2 we have the established character, we have the established subdivision pattern and that is what the provisions are trying to maintain. That was very strong feedback from the community: that people buy into these suburbs, they are established, they like what they have and they want to seek to protect that but allow for some level of redevelopment. That is the distinction between the two.

Mr Frazer: I will move on to slide 23. It indicates that three-storey apartments are available in just two zones—RZ4 and RZ5. There is now a subtle variation with RZ3 where it is possible to have three-storey apartments. RZ3 is notionally a limitation for two storeys. But the rules suggest that under certain circumstances where basically the third storey, the additional storey, cannot be seen from the street or cannot be read from the street, but still has the appearance of a two-storey building, it is possible to have a three-storey component to that building.

But it does not increase the plot ratio. The plot ratio is 65 per cent for RZ3 as opposed to 80 per cent for RZ4. It is difficult to have a three-storey building with that plot ratio efficiently, essentially. The plot ratios suggest two-storey development but if there was a design to have that third storey, the rules do allow for a departure from the basic rule, which is two storeys under a criterion that basically I explained—the same essence of what I explained earlier.

Finally, slide 24 indicates that up to six-storey apartments can be built on RZ5. It is “up to” because it depends on where the RZ5 zone is located. If it is adjacent to other residential zones, those building heights are lowered so that there is a stepped effect. In areas where it is RZ5 only—surrounded by RZ5—then six storeys are permissible, subject to local rules. In fact, in Molonglo for example along the main road it is a three-story minimum and a four-story maximum. So there are local variations as provided for in precinct codes.

Slide 25 asks the question: why does the draft estate development code contain agency endorsement provisions? Slide 26 identifies that the estate development code has a number of parts—parts A, B and C firstly, and then finally part D. Parts A, B and C are about estate planning and part D is about endorsement by government agencies.

What I can advise the committee is that we could cut out part D altogether from the code because it is essentially not ESDD's or ACTPLA's concern. But from an applicant's point of view, it is good quality, vital information that allows the applicant to plan their subdivisions in this case properly knowing the requirements of TAMS, ESD and other agencies—mainly TAMS—that become involved as well.

Up front in our code they know precisely what they are required to do to gain endorsement. So whilst part D is essentially an optional extra to the code, and the planning components of the code which are ESDD's responsibility or the planning authority's responsibility, they would have to be maintained. So that relates to the quality of the design rather than the engineering outcome.

Sometimes they go hand in glove because the width of the road is an important planning consideration too. It could provide a barrier between neighbourhoods, just by way of one example. The actual width of the road and the traffic carrying capacity are essentially a TAMS matter because it has the engineering expertise. So what we have asked TAMS to do—it has taken quite some considerable amount of time—but TAMS has given us those particular provisions, their standards, and they are built into the code so you can just go to one place.

If the applicant meets the requirements as set out in the code, the code says that it will be guaranteed endorsement for that particular component. If it is a local street and it meets the carriageway widths, verge widths and all the other components of a local street and it is of planning value, but essentially it meets the engineering requirements, then TAMS will endorse. It is required to endorse under our code. We have had lengthy discussions with TAMS about that and I think that all the parties are comfortable. So that is why the agency endorsement is in our code.

MS LE COUTEUR: And if it does not meet the requirements, then they can negotiate with TAMS?

Mr Frazer: They can do. Yes, that is exactly right. I suppose, to be blunt about it, we do not care what TAMS endorses provided they endorse it. So if the applicant wants to talk about a narrow carriageway width, a different corner radius or whatever, we do not have the expertise to determine whether that is worthy or not, but TAMS does. So if TAMS says that is all okay, we will accept that and go forward.

But we could be faced with a set of circumstances where TAMS endorses the design of a road—this would not happen very often—but from a planning perspective we might say, just taking that neighbourhood barrier as an example, that this is not good planning because this is going to create basically a barrier between one part of the neighbourhood and another or it is going to prevent school children from crossing the road from their local centre to the school, or whatever it happens to be. Then the

planning authority can refuse on the basis of the planning aspects of the subdivision. It is not locked into just approving it because it meets the engineering requirements. That is where parts A, B and C come in in the code.

THE CHAIR: Is this 27?

Mr Frazer: That is slide 27.

THE CHAIR: Thank you very much for that. On the agenda that we received before from the secretary we have the various information sheets to go through.

Mr Frazer: Yes, we could certainly do that. But, Ms Porter, we have essentially covered everything that is in those sheets through to the last two sessions. But if there is something that has emerged from—

THE CHAIR: No, that is fine. We had those ones before us to discuss today. If we have gone through everything that is in those, then I think it is really now up to members to ask further questions. That would be the best approach.

MS LE COUTEUR: One comment that has been made to me by a number of professional bodies was that they felt we have ended up with a mishmash. There has been a lot of discussion about whether there should be clear statements of intent and, if so, what status they have. Then, there is the issue of criteria verses rules. It has been put to me that the whole thing should be thrown out and rewritten.

It has been put to me by a number of bodies, and I am sure you have had the same conversation with the same people, that there certainly seems to be the potential with so many rules for innovation to be all but impossible and that with the relationship between what you are trying to do and the rules, it is not always possible—if someone is doing something that they believe meets the intent but potentially does not meet a rule, how can we have innovation and how can we actually try to achieve the goals of the plan as distinct from achieving the rules, because I think the two are not necessarily the same?

Mr Ponton: I guess the short answer is that is why we have criteria. Under the DAF leading practice model, which our legislation is modelled on, we have the need to consider the objectives of the zone, which are those high level principles that Mr Frazer went through earlier. Then we have essentially to satisfy the rules—three-storeys, six-metre setback, whatever it might be.

If you want to do something innovative, then you can rely on the criteria. We did previously have intent in our codes and we have systematically removed those because it was creating confusion. It is important that industry and the community have some level of certainty. That is what the rules do and the criteria in a way provide for innovation but do have some have parameters around them.

We had some situations in the tribunal where—intents by their very nature tend to be very airy statements. It does create a lot more confusion than benefit in our view. Do you want to add anything, Mr Frazer?

Mr Frazer: That is true. One of the major difficulties with statements of intent was that they were applied universally. If they apply at all then they would apply universally. Just going back half a step, there are two types of rules in our codes, essentially. One is mandatory rules. For example, a two-storey limit in RZ1 for dwellings is a mandatory rule. There are no associated criteria. The other type of rule, as Mr Ponton suggested, has criteria and there is some flexibility. In fact the 8.5 metre limit on building height in RZ1 has an attached criterion. That criterion talks about how it fits in with the neighbourhood and whether it meets the desired character of the particular area. So if there is a departure, if an applicant thinks, “I can build a better house with nine-metre overall height and I’m not going to affect the privacy or the sunlight performance of my neighbour,” I can actually mount a case for the nine-metre overall height. If it does not really affect him and I am still a good neighbour then that is where the criterion comes in.

If there was, however, a level above that called up an intent, and it is unclear how the intent is actually applied, it could well be that from the applicant’s point of view, if the applicant met the 8.5 metre building height they would normally get a tick. If they met the two-storey limit then they certainly would get a tick because that is a mandatory rule. But the intent implies that the development has to meet the intent as well. So even if the applicant meets the letter of the rule and would normally be given that tick, there is still some uncertainty that lingers because of the overriding statement of general intent. The applicant is never sure, particularly if it is taken to the tribunal, that while the applicant’s proposal is meeting the rules it is actually going to be approved in the longer term.

As Mr Ponton rightly suggested, we have been migrating essentially the statements of intent into the criteria. The role of the criteria is clear because it is set out in the act and it is also set out in each of the codes.

MS LE COUTEUR: I think there were some fundamental disagreements from some other people as to how things are structured.

Mr Ponton: The risk is that it is one extra layer that the planning authority need to consider, the community need to look at and the industry need to consider as well. We think that having objectives, rules and criteria are all that is needed. Having an extra layer in there as well just creates the risk of confusion.

THE CHAIR: So we are removing a layer rather than adding one?

Mr Ponton: Yes.

MS LE COUTEUR: Can I ask another question about solar access. As I understand it, the rules that you have talked about will not affect the 1.8 metre fence rule. That is applicable in all the residential zones. So even if I have built my six-storey residential in RZ5, I cannot overshadow more than that. Is that statement correct?

Mr Frazer: No, it is not.

MS LE COUTEUR: Tell me what I have got wrong, please.

Mr Frazer: The building envelope applies only up to three storeys. For a six-storey building, a 1.8 metre solar fence would—

MS LE COUTEUR: Would produce problems?

Mr Frazer: Yes indeed.

MS LE COUTEUR: So it is only up to three storeys; it is not related to zones?

Mr Frazer: That is right, in any residential development within—

MS LE COUTEUR: If I have an RZ5 block and for reasons that I do not know right now I decided to only make it three storeys, I would have to be concerned about overshadowing. But if I decided to put another storey on top, it does not matter. Is that correct?

Mr Frazer: That is right. It is a matter of establishing a threshold. As extremes we know that it is not going to be all that workable. So a 1.8 metre solar fence for a very tall building is unworkable but we know that it is quite workable because we have modelled it down to three storeys. So somewhere we have to draw the line between applying and not applying.

Mr Ponton: I would not say that solar access does not matter. It is just dealt with differently. There are still solar access provisions in multi-unit—

THE CHAIR: Yes, we dealt with that last time.

MS LE COUTEUR: No, we did not deal in any way with the overshadowing of neighbours. We only dealt with needing sun inside the house. I am interested not so much in what happens within the development, which, as far as I can see—tell me if I am wrong—is basically constrained by having to get your average six-star energy efficiency rating and you have now put back in that you have to get your three hours a day of sun. That is what constrains you within your multi-unit development, your larger development. In terms of my neighbours next-door, if it is less than three storeys then the 1.8 solar fence is relevant but if it is more than three storeys, Mr Ponton has said it is not an open game. But what is actually going to control it?

Mr Frazer: I think there are two components of that, Ms Le Couteur. One is the initial planning. We do not tend to put RZ5 next to RZ1. So the circumstances where a tall building is going to be next to—

MS LE COUTEUR: No, but it could be another RZ5 building.

Mr Frazer: Indeed, yes.

MS LE COUTEUR: The RZ5 people could still want to see the sun.

Mr Frazer: They can but we cannot prevent overshadowing, particularly of the ground floor—

MS LE COUTEUR: No, but I am trying to ask what the rule—

Mr Frazer: of an RZ5.

MS LE COUTEUR: I appreciate that there will be some overshadowing. I am trying to clarify what the rules are. I know it is impossible to say there will be no overshadowing. I am not going there.

Mr Frazer: Yes. So from one RZ5 to another RZ5, there are no controls—that is true—once the buildings are above three storeys. However, there are controls if an RZ5 is adjacent to another zone. And there are building height controls in RZ5. So it is not possible to build a six-storey building adjacent to a lesser zone under our controls. That has been the case for quite some time. It has been reinforced in the new code. So if you are next to an RZ1, the most you can have is two storeys.

MS LE COUTEUR: But you can still build a tall building next to a single storey. I live in Downer. Every day I go past the new development with the three curvy things—

Mr Ponton: Axis.

MS LE COUTEUR: Axis. There is a single storey next to that. It is clearly—

Mr Ponton: We may need to come back to the committee. I certainly recall that with Axis there was consideration given to overshadowing of the properties next door which were two-storey, as I recall.

MS LE COUTEUR: I think most of them are two storeys. I think there are one or two one-storeys amongst them, but it is a multi-unit development which has some one-storey and the majority two-storey.

Mr Frazer: That would apply. If it is only up to three storeys, then the overshadowing provisions would apply. They apply to the adjoining residential block. In that particular case, it is an adjoining residential block. So the adjoining residential block is protected from any building up to three storeys on an adjoining block.

MS LE COUTEUR: So it is not whether my new building is three storeys; it is whether the building I might be overshadowing is three storeys? I thought it was the other way around.

Mr Frazer: It is, yes. Basically, if the building you are developing is three storeys or under, then you cannot overshadow your neighbour by more than a 1.8 metre fence on the boundary.

MS LE COUTEUR: And that is even if the building I could be overshadowing is five storeys? What I am trying to work out is: whose three storeys matter? They matter for the new building and not for the old building? I am sorry, I am confused.

Mr Frazer: The principle is that you are not allowed to overshadow your neighbour. The exception to that is if you happen to be building a tall building. Just putting that

aside, the principle is that no matter what I do on my property, I cannot overshadow my neighbour by more than a 1.8 metre fence on my boundary.

MS LE COUTEUR: That is clearly not always adhered to.

Mr Frazer: Well, it is. These rules are not in place at the moment, so the particular proposal that you have been looking at was constructed under the old rules, and there was no solar fence under the old rules. But that is not to say it was not taken into consideration. It is just that we have now defined it as a solar fence.

MS LE COUTEUR: That particular one is substantially more than three storeys. You have just told me the new rules would not apply to that because it is more than three storeys. I am sorry, I am totally confused. I was then going to lead on to what happens when you have commercial zones next to residential zones and overshadowing within commercial zones. But I am even more confused than I thought I was.

MR COE: Would I be right in saying that, suppose the access DA went in today with these rules, if the block next door was a two-storey house it would be treated differently than if it was a four-storey apartment building?

Mr Frazer: No. If it is a residential block that could be overshadowed, then if I am building less than a three-storey building, I cannot overshadow my neighbour, even if they might have a five-storey tower. That does not happen very often.

MS LE COUTEUR: But if I am building more than three storeys, I can?

Mr Frazer: Yes, that is right. But the planning comes into it. We do not plan for high rise next to low rise. Even if that eventuates, we have our building height controls for RZ5 at least, bearing in mind that RZ4 is nominally three storey and RZ3 is two storey. So that comes into it. We are really only talking about RZ5. I will quote from rule 22 of the proposed new code: in RZ5 the maximum number of storeys for that part of the building within 50 metres of the boundaries of blocks in RZ1, RZ2 or RZ3 is three storeys.

MS LE COUTEUR: Where am I going to find this in my huge—

Mr Frazer: Ms Le Couteur, it is in blue (d) and page 9 of that code. It should be in the multi-unit housing development code.

MS LE COUTEUR: What would you define as “reasonable solar access”?

Mr Frazer: “Reasonable” is what reasonable people would think was reasonable.

THE CHAIR: It is a legal term, but it has always mystified me.

Mr Frazer: It is the best we have. We could have “applicable” or we could have “minimal” or we could have “maximal” or whatever. But the word “reasonable” is used over 800 times in ACT legislation alone. It is a good point, but if rule 22 is met, then within 50 metres of those zones RZ5 cannot be more than three storeys, in which case the building envelope would then apply.

THE CHAIR: I want to ask a bit more about these five-storey apartments. Obviously if you have two beside each other there is no way you can necessarily prevent the overshadowing, but is there some kind of rule in here that says you have to have a certain amount of gap between them?

Mr Frazer: Yes, indeed.

THE CHAIR: For recreation and to allow sunlight to filter through, or whatever.

Mr Frazer: There are two components of that. Certainly side boundary setbacks apply, and the taller the building, the greater the boundary setback as a matter of principle. We have kept what we call the wedding cake provisions—if you go up, it looks more and more like a wedding cake, it tapers up. That is in the code and carried over from the present rules.

Northbourne Avenue is a classic example of that. On many parts of Northbourne Avenue you can build apartment buildings—or any sort of building, for that matter—up to 25 metres. That is nine or 10 storeys in height. But because Northbourne Avenue is north-borne basically, if a building is built on one of those blocks, it must overshadow the neighbour. There is no way of avoiding it. But 70 per cent of the apartments have to have three hours of sunlight. That is carried over from the present rules. That could just be into the living area. So it could just be a small window or even a higher window or whatever, but it is the designer's problem to incorporate that in at least 70 per cent of those.

As we discussed last week—and Ms Le Couteur rightly pointed this out—the energy ratings apply to those buildings as well. So they have at least five stars but with an average of six. There are two components. It is very difficult to allow for the sunlight access to apartment buildings. It is basically the laws of physics and the laws of astronomy that play against us I am afraid.

MS LE COUTEUR: In terms of where we have a commercial zone next to a residential zone—clearly commercial ends somewhere and residential starts—you always have interface issues. What happens there as far as overshadowing goes?

Mr Frazer: It is more problematic because it is a commercial zone first and foremost. But we are encouraging people to live in these commercial areas.

MS LE COUTEUR: We are putting in ground floor active frontages and sticking apartments on top.

Mr Frazer: Indeed. As far as the controls are concerned, we are treating them more like a series of apartment buildings. It is very difficult to apply the solar access in those circumstances in the commercial zones. If it was purely residential, I imagine it could apply. I am not saying those cases are rare because in Gungahlin there are some circumstances where single dwellings are built in commercial zones. It is most unusual elsewhere in the city.

THE CHAIR: If persons decide to build a single dwelling on a commercial block, as

you were saying before, they are going in fully aware that they will be overshadowed.

Mr Frazer: That is right.

THE CHAIR: Is that what you are saying?

Mr Frazer: It is a commercial zone first and foremost.

MS LE COUTEUR: The interface between the commercial zone and the residential zone is basically at the edge of all the commercial and residential zones. What overshadowing considerations are there? Will there always be a road in between?

Mr Frazer: There is almost always a road. That prevents overshadowing.

MS LE COUTEUR: In general, it is not going to be an issue.

Mr Frazer: That is true. There may be some anomalies but by and large that is the case.

THE CHAIR: Do any questions come to mind on this discussion? Do you have any, Mr Coe?

MR COE: No.

THE CHAIR: Ms Le Couteur, do you have any more questions?

MS LE COUTEUR: Given that there is an awful lot of very technical stuff here and we are not supposed to be doing our report on the basis of fact sheets because that is not what is legally going to be voted for or not voted for, have you any ideas about the best way or organising this? I find it really hard. Fact sheets are very useful. As I said, it does not seem to me that is what we are inquiring into.

Mr Frazer: The only suggestion I have is to put yourself in the shoes of an applicant. Bear in mind that this is not so much a novel, it is more like a telephone directory. Rather than reading it from cover to cover—no-one ever does that. In fact, no-one ever prints it out, for that matter. All these rules and regulations live in the digital ether. From a practical point of view, you could assemble some what-ifs and put yourself in the shoes of an applicant. “If I am going to build a single dwelling house in RZ1”—in fact that is not a good example because largely they do not come under the code; they are an exempt development—“If I was going to redevelop in an RZ2, then what provisions would apply and what safeguards would my neighbours have to protect against my designs?” Perhaps that is one way of looking at it. That is of course for residential developments of various kinds.

In the estate development it is more complicated because that is even more technical. It is designed for only a handful of players in the residential subdivision or urban development area. We do not cater for mums and dads. They do not develop. We have not worried too much about the technical nature of the estate development code. The other code has to be user friendly. As I pointed out, there is some sort of logic in the way an applicant would approach a particular proposal.

THE CHAIR: Was that helpful?

MS LE COUTEUR: The estate development is going to be particularly challenging because, as you say, you are not trying to make that user friendly. I certainly have had representations from people who have got problems with some parts of the estate development code. It is going to be very hard for us.

Mr Frazer: We are available to go through it line by line if necessary. I have made myself available to the secretariat to do just that if that is of value. I know you have more time constraints than I have. That really is a problem.

MS LE COUTEUR: That is a very depressing outcome if we have to do that. We are simply not going to have the time to do it.

THE CHAIR: If we are going to finish the inquiry before the end of this term, yes. It is up to this committee how to handle that. We will obviously deliberate on how far we have got. We may require you to come back and give us some more briefings. That is probably on the cards. Thank you very much, Mr Ponton, for making people available. Thank you, Mr Frazer, for your exhaustive explanations today and for the offer of coming back and reading it line by line, which hopefully we will not have to take up.

Mr Frazer: Or something in between the two.

THE CHAIR: Yes. We have finished this briefing now. Thank you very much.

The committee adjourned at 9.46 am.