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 302—community facility zone)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 17 JUNE 2011

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 21 January 2009

The committee met at 1.30 pm.

CORBELL, MR SIMON, Attorney-General, Minister for the Environment and Sustainable Development, Minister for Territory and Municipal Services and Minister for Police and Emergency Services
SAVERY, MR NEIL, Chief Planning Executive, ACT Planning and Land Authority
FRAZER, MR BRUCE, Acting Manager, Development Policy, ACT Planning and Land Authority
MOSER, MS SONYA, Team Leader, Territory Plan Variation Unit, ACT Planning and Land Authority

THE CHAIR: Good afternoon, and welcome to this second public hearing of the Standing Committee on Planning, Public Works and Territory and Municipal Services on the draft variation to territory plan No 302—community facility zone. I welcome you, Minister for the Environment and Sustainable Development, and also Mr Savery and other ACTPLA officials. Obviously, you are familiar with the beige card that is in front of you, which affords parliamentary privilege to you and draws your attention to various other matters about the recording of the proceedings. Are you happy for us to proceed?

Mr Corbell: Yes, thank you, Madam Chair.

THE CHAIR: Minister, do you have some opening remarks?

Mr Corbell: I do not have an opening statement, except to indicate that Mr Savery and other officials are available to answer the committee's questions and are happy to try to do so.

THE CHAIR: Ms Le Couteur, do you have a question?

MS LE COUTEUR: Yes. You are probably aware of the evidence that was given to the planning committee by the Planning Institute at our last public hearing.

Mr Corbell: Yes.

MS LE COUTEUR: In particular, they talked a bit about intent. I could read it out to you but I am sure you all know what I am talking about. Basically, could you go through what is happening with intent, and should we be as concerned as the Planning Institute, as distinct from the planning committee, is?

Mr Corbell: I am very happy to ask officials to deal with the particulars of your question but I will make some general observations about the evidence given by the ACT Division of the Planning Institute of Australia.

The first point to make relates to the claims that the PIA representatives made to the committee in relation to the notification requirements for the multistorey car park structure at the Canberra Hospital. Those claims are incorrect. The suggestion was made by the PIA representatives that the car park had to be—

MS LE COUTEUR: Minister, we actually have received a letter from the Planning

Institute correcting that part of the evidence.

Mr Corbell: Yes, I am aware of that; thank you, Ms Le Couteur. I just wanted to make the point that the claim was incorrect; that the development application was clearly notified by ACTPLA as the demolition of an existing two-storey car park and the construction of a new five-storey car park. There was no subterfuge. There was no suggestion or attempt to hide or mislead what was being built there. Indeed, the notification was very clear.

I note that, in the PIA submission, or in their verbal evidence to you, they sought to suggest that a range of currently prohibited uses should be considered in the impact track, including uses such as multi-unit housing, mobile home parks and others. This is, I think, an approach which the government does not agree with. Community facility land is not for multi-unit housing and should not be for multi-unit housing. We do not support the proposals that are suggested by the Planning Institute in that regard either.

In relation to the issue of intent, I might ask Mr Savery and others if they would like to try to elaborate on the issues you raised, Ms Le Couteur.

Mr Savery: The issue of intent has been raised with the ACT Planning and Land Authority through the work that it has been doing in reviewing all of the policy content of the territory plan. So I do not think we should look at this in isolation necessarily from just community facility land. It has come up in the review of the residential zones, the estate development zones or codes, and I have no doubt it will be raised in the current discussion around the commercial codes.

We do not agree with the views expressed by the Planning Institute of Australia having regard to the way that they expect statements of intent to operate within the code-based system. I think it is important in that respect to understand how the Planning and Development Act is set up to operate. I am not going to take us back through the whole structure of the DAF leading practice model and the principles that go with that. I am aware that that material was also conveyed to you at the time of your hearing with the Planning Institute of Australia.

Fundamentally, when the government produced the new Planning and Development Act, which was enacted in 2008, it was structured in a way that placed significant weight around the objectives and rules and criteria of the codes. There is no basis in law for statement of intent in the Planning and Development Act. And if you create such a mechanism, it will confuse the operation of those other components where the planners and those who are making applications and those who are wishing to make submissions need to have regard to the principles, the purposes, the rules and the criteria. Those things are all interoperable. We could go through individual examples and test how those work, and that is not going to get us very far today, but it is important to emphasise that the act creates a framework for all of those mechanisms to work in an interoperable way, and in many respects on the principles of subsidiarity, and makes no reference to, and there is no framework for, statement of intent. So even if we said we agree with it, you would have to change the legislation to give it a basis. But if you did do that, you then have to restructure all the other elements, which tends to undermine the reasons why you have some of those elements there.

Those elements that I have referred to, particularly the purpose clause and the objectives of the zone, are, in effect, giving you the intent. But they give it to you in a much more structured way, whereas an intent could be, in our view, much more open to interpretation because it will read as a very high order principle. What you want to get down to ultimately, as a development assessment officer, is: does this application meet the rules, and if it does not meet the rules, can it satisfy the criteria which give you a wider range of discretion, having regard to the purpose and the principles enunciated for that particular zone or for the code? That is, broadly speaking, the framework and that is why we would not necessarily agree with what is proposed, having acknowledged that it is an issue that has been raised with us, and we think will continue to be raised with us. I can say—and I may ask Mr Frazer to comment on this—that it is something that we have dealt with, not by way of statement of intent but we have dealt with it in variation 306 for the residential and the estate development code, in a slightly different way.

Mr Frazer: It is true that, with the formulation of draft variation 306 and the codes that are included therein, the statements of intent that are currently in the codes, the residential codes in the main, were not dismissed out of hand. In fact, those statements were taken seriously into account and, where appropriate, the useful and informative parts of those statements of intent were incorporated into the criteria for the relevant rules. In that way, those statements of intent are not lost and there is no ambiguity about how they should be used in the assessment process. This has a number of advantages but essentially, as Mr Savery was saying, it fully meets the requirements of the act without that inherent ambiguity. So if there was a statement of intent to do with residential amenity, that statement of intent would then be taken out of that context and placed into the appropriate criteria where it could be usefully used.

MR COE: Minister, broadly speaking, were you surprised by the submission put in by the Planning Institute?

Mr Corbell: I have come relatively new to this inquiry. So I am still fully assessing all of the issues at play in relation to these policy changes which, as Mr Frazer indicated, were introduced on the part of the government by my predecessor, Mr Barr. Some of the issues raised by PIA were of some surprise, particularly the claim about multi car parks because the claim was simply incorrect. ACTPLA were aware of other issues. They had been raised in previous consultation exercises that had led up to the development of this draft variation. Others were not. They were made aware of these issues as they developed.

MR COE: Do you agree that variation 302 for community facility zones will have a much broader impact than the title suggests?

Mr Corbell: No, I do not.

MR COE: So you do not see any unintended consequences or un-thought-out consequences as a result of this variation?

Mr Corbell: No, I do not believe so. I do not think so. The whole intent of this policy review is to provide greater clarity and remove some ambiguities that currently exist

in relation to the interpretation of policies as they relate to community facility land zones. I think it is an important process that we need to work through. Obviously this committee inquiry is part of testing and examining those issues.

MR COE: I think you have hit the nail on the head in terms of the committee being here to explore these sorts of issues. Perhaps at first glance, we did not quite grasp the depth of the issue. The Planning Institute certainly did open my eyes and perhaps the eyes of other members to the pluses of the variation. They also pointed out a number of specific issues. One such issue that was raised was the example of the Pegasus riding school, which is on agricultural land but which the Planning Institute would say is inconsistent with the territory plan. Do you see that as an inconsistency and do you see that as something that should be addressed?

Mr Frazer: There are two important matters in consideration of Pegasus in particular. One, it is on broadacre land on which agriculture generally is permissible. More importantly, Pegasus has a couple of leases which allow for the uses that have been undertaken very meritoriously on that land for some years. Whilst it is a community facility, I suppose, on some definition, it is essentially agriculture being conducted on a broadacre zone and is fully compatible with the territory plan and the territory leases that they operate under.

MR COE: Given the territory plan is there to provide certainty, clarity and definition for land use in the territory, when you have the Planning Institute coming out and raising issues such as this, do you agree that in actual fact the territory plan is not providing that kind of certainty?

Mr Corbell: No, I do not. As Mr Frazer has said, we are talking about different land use zoning. The issue with Pegasus is different land use zoning. As Mr Frazer has indicated, that use that is being undertaken by Pegasus is entirely consistent with that land use zoning and is entirely consistent with the specific provisions of their lease in relation to that site. The inevitable nature of land use planning in the territory is that it is conducted within an overall framework of the leasehold system in circumstances where often leases have been issued, in many circumstances, before the territory plan came into effect. So there is a necessary interaction between those two documents, those two frameworks. I do not know the age of the leases in relation to Pegasus but there can be no doubt that that use is consistent with both the territory plan and the particular leasehold that has been granted to Pegasus.

I think Mr Savery wanted to raise another issue in response to one of your earlier questions, Mr Coe. I will ask him to do that.

Mr Savery: It relates in part to the minister's response just then. As a general observation, it needs to be understood that the territory plan is a planning ordinance, a document that is reflective of policy settings that are created at the time. Over time, some of those policies, obviously, become less contemporary and may not necessarily match some of the expectations of what people would like to do. In the context of how that correlates with the leasehold system, as the minister has said, we have got circumstances across the territory—and you can go into any jurisdiction and you will find a similar situation—where the planning ordinance and its policy settings are no longer consistent or do not meet the aspirations of what people would like to do with

their land and what the government might consider is necessary or appropriate having regard to contemporary issues. That is precisely what the government is doing.

What the government has committed to do is go through and examine all of the policy content of the territory plan over a number of years. This was the first of those policies. So we are actually going through that process of looking to ensure that our policies are contemporary and can give the certainty and consistency that people expect. So I am not at all surprised that people in their comments are coming out and drawing comparisons between pieces of land or uses that are occurring in one particular location and what the policies may or may not say about these things. I can assure you that you will never get a planning ordinance that can marry itself to be entirely consistent with what is actually happening out on the ground.

At the end of the day these documents are open to interpretation. Someone has to apply a level of interpretation to the policy to say: "Is this suitable? Is this what the policy intends? Is this what the lease means?" You have to marry all those things together and make decisions. It will mean that certain things—and I am not saying this is the case with Pegasus—maybe that we deem to be lawfully established uses are no longer consistent with the territory plan. The territory plan has moved on and said, "In the future we will no longer support industrial use in this area." It does not mean that the industrial use that is already there cannot continue but it does mean that it is inconsistent with what the territory plan is articulating for future policy setting for that area. That exists all over the territory, all over the country.

MR COE: Perhaps I should clarify that I am very much in favour of the work that Pegasus do. I would hate to be misinterpreted on that. Given that planning does evolve and that you have ordinances which are often just a snapshot in time, is the current framework of the territory plan, its actual structure, providing the flexibility that you need as well as providing that overall certainty?

Mr Corbell: As Mr Savery said, this is the whole point of the review. The policy review process is to try to make sure it does remain and is able to provide a contemporary framework for decision making about what land is used for in the territory. As Mr Savery said, there is this inevitable intersection between what legal rights have been granted to a person under their lease for the use of land and what the planning framework of the territory plan requires decision makers to take into account for future uses. So there is that inevitable issue between existing, established uses and future uses and the fact that a planning framework such as the territory plan over time will guide a transition from some uses to other uses.

But it does not extinguish legal rights. It does not remove uses that have been purchased and are being undertaken. It does direct what can and cannot be commenced at some point in the future.

Mr Savery: Can I make one other observation which takes it back up a level to the structure of the territory plan, as opposed to the policy content, which is what we are involved with here. The structure of the territory plan is the most contemporary piece of planning documentation in the country, built on the leading practice principles of DAF, which were advocated for by PIA, industry and every other group that has been lobbying governments over the last few years to modernise their planning systems. So

we have the most contemporary planning system. We have the most contemporary planning ordinance structure, which allows certainty, if you wanted to go down the path of exempt or code or prohibited—because prohibited is giving you certainty—and it gives you flexibility. If you want to test the policy settings, you can go into merit or impact track, provided it is not a prohibited use. So you have certainty, you have opportunity to go down a relatively fast-track process and you have flexibility if you cannot satisfy all of the policy settings.

The benchmarking that has been done recently by the Productivity Commission suggests that our planning system is one of the best performing in the country, through its recently released document on planning and zoning laws. All of our internal benchmarking, our DA approval time frames, suggest that the system is actually working as planned, as intended. What we have not yet completed is the review of the policy content, to ensure that it is contemporary for its purposes. This is the first; the residential is out on exhibition now. So is the estate development code. The commercial discussion paper is out for that purpose. So we are getting there.

MR COE: If the point of the territory plan is to provide that broader framework but still the flexibility and all that goes with it, I wonder whether you should have to have these significant reviews of each policy section, if there are, in effect, still structural problems.

Mr Corbell: The government does not believe there are structural problems. We substantially restructured the territory plan with the passage of the Planning and Development Act back in 2007, so that huge body of work has been completed. But the government was very clear in 2007 that when we restructured the structure of the territory plan we were not going to revisit the policy inherent in the plan until a later point. We said that clearly it was too much to do in one bite to completely restructure the way the territory plan operates as well as restructure the policy content within it. So the government is doing what it said it would do; that is, we have restructured the territory plan and now we are reviewing the adequacy of the policy content within it, and we are doing that across each of the relevant key policy areas within the plan. So we are doing what we said we would do and this exercise is a very important way of testing to see whether or not what we have got in relation to this particular zoning policy is up to scratch and meets contemporary needs.

THE CHAIR: Talking about the way that things change over time, a few of the submissions that we got talked about the fact that there is a sunset clause. In relation to a sunset clause, mention was made of the neighbourhood plans and how these will no longer become relevant; there is no reference to them actually in the territory plan. There was some disquiet amongst groups about that and about letting go of that concept. Some people were wanting to maintain it into the future. Could you explain to us the reasoning behind that. Also, could you talk a little more about the precinct codes. Are they a replacement for the neighbourhood plans or how are they related?

Mr Savery: I will start and then I will pass over to Mr Frazer and Ms Moser. I have given evidence on this in previous forums. I think the starting point here is that the neighbourhood plans do not have any legal status. They are not statutory instruments under the Planning and Development Act. Even in their former guise as guideline documents pre 2008, they were essentially pieces of work that ACTPLA could have

regard to, but you had to try to decipher out of them what were the planning elements, because the neighbourhood plans produced a wealth of information and effectively engaged with the community about their aspirations, but you could almost say that the majority of the documents related to non-planning issues or issues that could not be administered through the territory plan.

What we have been doing progressively, as we go through each of the policy reviews, is extract out of the neighbourhood plans those things that are relevant to each of the codes and they get embedded in the codes as codes, rules or principles. That is the exercise that we have been going through. So, incrementally, the neighbourhood plans, from a planning perspective, are becoming redundant instruments. It is not to say that all of that body of work that was produced has become redundant because we have actually extracted from it, just as we do with master plan exercises, which are far more focused on land use planning outcomes; we take out of them what we can apply in a statutory sense through the territory plan. So that is what we have done.

The neighbourhood plans, as far as they relate to this code, do become less influential, if there is any influence at all. But there are residual components of the work taken from the neighbourhood plans and incorporated into the codes, whether it is in this code, the residential codes or the commercial codes.

Ms Moser: With regard to the precinct codes in this particular draft variation, their intention is to have a level of development and specify where the locations are that are not appropriate for some of the types of residential development that can occur within the community facility zone generally. So what they do is specify where land is required for community facility uses. Supportive housing was a use that was introduced into the territory plan. Its intention mainly was that, where there is land, possibly church facilities, where it is not well utilised, possibly supportive housing would be a good use.

The idea of these precinct codes is to say that where, particularly in newer areas or on unleased territory land, there seems to be a need for community facilities rather than those residential uses, it specifies and protects that land for that purpose, so that schools can be provided in the future. The "E education" overlay was one of the things included in this land that we think is extra special, if you like, that needs to be protected from some of those other residential uses such as supportive housing and retirement villages. We have introduced a precinct code in this way so that it is reflected in the development table, and in the development table it states "where identified in a precinct code", these other uses are prohibited, such that it can meet the primary purpose of the zone, which is to provide and facilitate social sustainability and inclusion by providing accessible sites for key government and non-government facilities.

That is the overall intent and purpose of the zone and it is also a reason why, with respect to some of the uses suggested by PIA in its presentation and subsequent letter to the committee, they think the uses should be expanded. But in order to make a protection of those uses, one of the objectives in the zone talks about specifically protecting social and community uses from competition from other uses. So if we were to open it out very broadly, which speaks to Mr Coe's question before, if we were to change the structure and allow a whole lot of uses rather than prohibit them,

those uses may well take over valuable land for community facilities, rather than protecting that land as a valuable resource for the community.

MS LE COUTEUR: I would like to go to the page on the community zone development table. I have a few questions and comments on that. I think people quite reasonably find it very confusing. The minister in his first comment said that you could not have multi-unit housing in community facility zones, but I would have assumed that that statement would not always be true, because you could have supportive housing. Surely, if someone decided to do their supportive housing physically as multi-units—maybe the point is that it is not clear. One side of the paper says you can do it and the other side of the paper says that you can't do it.

Mr Savery: That is not the case. It is not just a question of the physical form, it is the actual application of use. Certainly supportive housing can give the appearance, in a physical sense, of being multi-unit housing. But how you can apply supportive housing is very different to how you can apply multi-unit housing. That is why they are defined separately and why one is prohibited and one is permissible. Multi-unit housing is not supportive because it can be subdivided and, therefore, can compete, as Ms Moser has just said, with other community facility activities that cannot find adequate opportunities to be located on residential land. Often residential land is far more expensive because the government, typically, controls community facility land.

Supportive housing cannot be subdivided and, typically, is associated with some organisation or association sitting over the top of it—and Ms Moser made reference to churches as an example—where they are giving assistance and care through that process. I think it is important to draw the distinction between the physical form and shape of an activity and its actual use. That is why they are defined very differently.

MS LE COUTEUR: I think the problem is that it is totally clear to someone in your position but to the public it is not. That is where you get the issues that the Planning Institute talked about which are, admittedly, slightly incorrect—

Mr Corbell: A word that the Planning Institute would understand.

MS LE COUTEUR: To the extent that that is sort of the point that I am making. If the Planning Institute can be confused, what hope—

Mr Corbell: I do not think they are confused.

MS LE COUTEUR: What hope do the rest of us mere mortals have?

Mr Corbell: I would say that I do not think the Planning Institute are confused. I think the Planning Institute are advocating a broader range of definitions.

MS LE COUTEUR: A different view. That is partly what I am going to be saying. From the point of view of the community, they read all the things that are prohibited and then, as a smaller user, come in, which is what the Planning Institute was effectively saying. I think some different terminology or something is needed. It is hard when you have one side saying it is prohibited and these things clearly occur in community facilities. I am not arguing about having sufficient car parks in the

community facility land. That is not where I am trying to go. I am trying to say that it is really confusing for the community because they read a page of prohibited things. This is effectively what the Planning Institute said. The back page is more on prohibited. There is the example of the Canberra Hospital.

Mr Savery: While the minister is becoming familiar with the document, we have reviewed the PIA submission in terms of the uses that they advocate should come out of prohibited into either merit or impact. We do not support that. Obviously, that is part of the reason why the committee is here. It can give its own views to the government for consideration. We believe that, because of the very specific nature of the community facility land and the fact that it is in relatively short supply, that increasingly indicates that you have to protect it for the activities that the community would expect to be placed there.

In terms of any confusion, I do not think that confusion exists. The minister made the point before. I think it is more advocacy than confusion. If we use the car park as an example—and this brings in the whole notion of ancillary use—the ACT Planning and Land Authority had no difficulty considering the car park at the hospital as an ancillary use. It is ancillary to the activity of a hospital. Those concepts exist throughout the territory plan and any planning ordinance.

MS LE COUTEUR: Mainly what I am saying is that it is a presentational thing. This says quite clearly that it is not possible to lodge a development application. That is what they say. I am not trying to say that we should be turning community use into car parks. That is not where I am going. Where I am going is that, as a matter of reality, some of it will be used for roads, car parks, ancillary uses. Presentations like this lead to confusion and angst amongst people. This, to me, seems incredibly clear. It is not what you are trying to say.

Mr Corbell: I understand the point you are making. I think the key issue here is—and it is very important—that the government is clear, and the territory plan is clear, when it says, "If you have got a piece of community facility land, its primary use cannot suddenly become a car park." If you say that a piece of community facility land can be used for a childcare centre, it would be silly to say, "Yes, you can have a childcare centre there but there is nowhere that you can park the cars so that mum and dad can drop their kids off to the childcare centre." That is really what we are getting down to here. I think it is a commonsense way of dealing with the issue.

We have to be very clear that a piece of community facility land cannot be used because the government or a private developer decide they want to build a multistorey car park because it is a place to build a multistorey car park. But if they need to build a car park because there is a need to provide that facility so that people are able to access the primary use of the site, which is a childcare centre, a school or a hospital, say, then that is obviously an ancillary use and it makes sense to do that.

I would put back to you: what is the alternative? We have to make it clear that there should be prohibitions on the use of this land and we have to be very clear that we cannot just take a piece of community zoned land somewhere in the suburbs and say, "That is a great spot for a car park." That would not be allowed. If you were to say, "We have got a childcare centre here and we have five car parks and we need another

10, because the childcare centre is getting busier," that is allowed. That is common sense. That should be permitted. That is really what these tables are all about.

MS LE COUTEUR: I think the solution is either putting in another line that any of these may be a minor use or possibly, with a bit more thought, having another table of things that will not be acceptable as the primary use but will be acceptable as ancillary uses. They would be really good uses. We do not have this clear statement that it is prohibited.

Mr Corbell: We are happy to take on board any suggestion the committee might like to make.

MS LE COUTEUR: The other thing around precinct codes—and again I think this is a problem that is causing confusion—is: if you go back to the page before, there are two lines about Campbell and Richardson. They have some specific things we can do there. The solution is that they should be in the precinct codes. On page 4 of this table, we have two maps. The first time I went through this I thought, "Clearly this is all the precinct codes." You have got two. I think it would be easier to remove those, stick them with the precinct codes, rather than end up with people being confused. Obviously these are precinct codes or they are not.

Ms Moser: Thank you very much for that question. Are you referring to the area-specific principles that are there relating to a scientific research establishment and agriculture?

MS LE COUTEUR: Yes, Campbell and Richardson. One is scientific research, the other is agriculture.

Ms Moser: They were things that were put in place when the territory plan was restructured, which came into effect on 31 March 2008. If you like, they are a bit of a hangover. At the time, it was seen that those additional uses on those particular parcels of land were appropriate and would have been inserted into the territory plan previously. This is something that is a hangover. The idea of the precinct codes, as they are currently being introduced, as suburb precinct codes, is at the moment to show where areas need to be reserved for community facility purposes, as I explained before.

There may be a possibility of incorporating these sorts of things into the precinct codes but I guess their primary purpose has not been to do that. In future, there may be a possibility to do that. We could look at whether it made sense to add to the suburb precinct codes in that way. We already have some other things that are in suburb precinct codes such as bushfire attack levels et cetera. They tend to be in the future urban areas and they get uplifted into the territory plan when those future urban areas get uplifted. There will be a broader role for suburb precinct codes into the future. It is certainly something that could be looked at and considered. The primary purpose of these ones was to reserve that land for community facility purposes rather than supportive housing et cetera.

MS LE COUTEUR: In the tidying up, you removed the words about solar access, but we have not actually got a solar access code yet. I appreciate about getting rid of

duplication, but where is it now?

Mr Frazer: The community facilities code does attempt to protect adjoining residential uses from overshadowing. That is largely done with building heights in the main. It is true to say that the new provisions of 306 will expand on that, flesh all of that out and have a firm basis for that policy. But ultimately it will achieve the same end, and that is to protect adjoining residential property. Whether you are being overshadowed by a residential property or a community facilities building, it does not make any difference. It is still overshadowing.

MS LE COUTEUR: After 306 you will then put the same in here, or is it here and I am not understanding it properly?

Ms Moser: If I can expand on Mr Frazer's comments, in the current proposals, under C9, which is part 2.3, number of storeys, there is a level of protection. It is in regard to heights and how tall buildings are allowed to be, which ranges from two storeys to a maximum of four storeys. Also, in criterion 9C, it talks about minimising detrimental impacts, including overshadowing. So the word "solar" has actually been taken out from what it previously was under the setback requirements, but those things have been incorporated, just in a slightly different way. I think they are no less effective.

In addition, where residential care accommodation, retirement village and supportive housing are able to be assessed, on the land where it is able to be assessed, the single dwelling housing code and the multi-unit housing development codes have been mandated as "other development codes for assessment". So with respect to what is currently contained, there is a raft of criteria under "solar access" in those codes, and they will still remain applicable to the housing developments on these sites. So when DV306 comes into place, as they have some solar implications, they will then be applied to this type of development within this zone, quite clearly.

MS LE COUTEUR: So 306, when dealing only with residentials, would be any residential, which obviously would be supportive housing within these zones, and it would then have the DV306 requirements on it?

Mr Savery: What is happening here is that there is a nexus between 302 and 306 for the purposes of applying solar access provisions for residential-style development, which would apply to supportive housing and retirement villages, as has been mentioned. On other types of development that might fall outside that, they are largely going to be constricted by height requirements in terms of setbacks to adjacent residential properties.

THE CHAIR: Talking about height restrictions, which Ms Moser was pointing out to us, the University of Canberra was very concerned about the fact that that would restrict their ability to build to, say, six storeys for their student accommodation. What was said was that the accommodation building would be seen as an ancillary use to education; therefore it would be permitted to go higher than four. That did seem to be a bit of a confusing message to people. I was wondering how we can make it a little clearer. There was another instance that the Planning Institute pointed out. You will see in the *Hansard* that they made some quite strident statements about setbacks and the flexibility around that; therefore what was the use of having a rule around setbacks

if it was entirely flexible and, in their language, could be tossed in the bin? It was a rather "out there" statement, but that was their opinion about the particular rule around that. Could we get some clarity around that so that people can understand the reason why these things are in the plan document.

Mr Savery: I will give a general observation and apply it to the University of Canberra context. Again, this brings into play a raft of elements of the territory plan and its structure. The interoperable nature of rules, codes—and with codes, we have three classifications of codes: precinct codes, development codes and general codes. You will find that there are circumstances like the University of Canberra where, if you simply went into a development proposal on the basis of applying the development codes, you may find that you are not able to achieve what you might like to achieve. However, on something like the campus of the University of Canberra, we have always advocated to the university to develop a master plan, and it does have a master plan. A master plan can be uplifted into a precinct code, and you then create a set of rules and criteria to deal with their specific circumstances. Given the size of that campus and their ability through a master plan to position buildings to satisfy the government's broad policy principles around sustainable design and solar access, you would be able to craft something almost unique to its particular circumstances. Ms Moser might want to drill down in a bit more detail.

Ms Moser: Certainly. In terms of the setback, there is a rule which talks about being set back six metres from the boundaries of blocks in a residential building. That is rule R10. There is also a criterion, C10, which talks about "buildings and other structures sited to achieve all of the following", and its consistency with the "desired character". The desired character is something that is determined in terms of the zone objectives et cetera and would be in consideration of the residential codes that might be adjoining these properties as well. A consideration of that could occur. It also talks about reasonable separation between adjoining developments and reasonable privacy for dwellings on adjoining residential blocks and reasonable privacy for principal private open space. And there is another one: "reasonable solar access to dwellings on adjoining residential blocks and their associated principal private open space".

So the rule provides some certainty so that if, when it is being assessed, you meet the rule, that is great; it gets a tick. Alternatively, the criterion is providing a performance standard, if you like, to demonstrate why you should have a different outcome from the outcome of the rule. So when a development assessment occurs, those issues are taken quite seriously in terms of whether they meet those things. It is only if the application is able to demonstrate a meeting of all of those aspects of that criterion that a development would then be deemed to be acceptable.

THE CHAIR: The difficulty that I think arises sometimes for the application is that when an ordinary person in the street reads "desired character", they may interpret that in a different way from the actual regulation.

Mr Corbell: It is the nature of the planning discussion.

THE CHAIR: Yes, because "desired character" might be entirely different as far as they are concerned.

Mr Corbell: Absolutely.

MR COE: Broadly speaking on that, government policy, and legislation in general, is perhaps the most effective way it can be understood and the message can be conveyed as clearly and concisely as possible. The example that Ms Le Couteur raised earlier with regard to the list of prohibited uses I think is an example of government communication which is largely inaccessible to the average person. If you were occupying some CFZ land, if you were on a church council or a parish council and you were thinking about what you might like to use some spare land for, and you were to go to the territory plan—if you had the nous and the understanding to do that—and then you were to go to CFZ and saw that list, I think that would have a fair bit of influence in guiding that community group in terms of any planning they might have. Obviously, one example is where it says that a car park is prohibited; it really should say "car park when it is not directly related to the use of the land already there" or whatever. How many other places throughout the territory plan are there vagaries like that which largely make it inaccessible to the average person?

Mr Corbell: There are two things I would say about that, Mr Coe. The first is that, obviously, for a lay person—your example of a committee member on a church board and so on—there was always the option open to them of simply making an inquiry of the authority and saying, "We need to do this; is it permissible? I've read this. It seems to say it is not permissible. Is that correct?" Planning officers are there to give guidance, to give advice, in general terms, about what the plan does and does not permit. That sort of confusion can easily be short-circuited by a simple inquiry to the planning authority. That would be the first thing I would say about that.

The second thing I would say is that planning documents, by necessity, have to be able to stand up to legal scrutiny and planning approvals or refusals have to be able to stand up to the scrutiny of an administrative review process in tribunals such as ACAT. The challenge for any statutory planning document is for it to be sufficiently robust as to stand up to challenge and testing through a legal process but still give guidance and information in as straightforward language as possible for the lay person. This is a difficult task for any planning agency but I think that, overall, we strike that balance well. To the extent that a formal document such as the territory plan is not able to give that clarity to the lay person, a simple inquiry to the planning authority and to relevant planning officials can often alleviate any confusion that may exist.

MR COE: But do you acknowledge that there are parts, like the ones that Ms Le Couteur raised, that can be cleared up?

Mr Corbell: As I indicated, if the committee wanted to make a suggestion about wording that it felt might assist in clarifying this issue about ancillary use versus prohibited use, the government would be very open to considering that.

Mr Savery: Could I make two other observations. The exercise that we are going through here, and I include variation 306 and the release of the discussion paper on the commercial code, is a process of continuous improvement. So, in part, in answer to your question, yes, we are always looking to identify ways in which we can improve things. Having said that, the feedback that we have had already on 306 is quite staggering in terms of the positive response we have had from people,

community groups and industry associations, saying just how clear and easy it is to work with, compared to 301 and 303. Of course, 302 was produced before 301 and 303. So we can obviously take from that feedback and apply elements, where relevant, to how we communicate this, and obviously in the future how we do the commercial code.

The second thing I would like to say, however, is that a large part of your question relates to structure. In that respect, when we did the new planning act and the territory plan, I believe it was Minister Corbell who convened an expert reference group which comprised industry reps, community reps and a few other people, and I think Ms Sue Holliday was involved. They helped to advise us on the structure. So, through a reference group which had to balance, as the minister said, what is subordinate legislation, being the territory plan, with trying to achieve effective communication in as simple a way as possible, we had a reference group, a cross-section of the community that uses this instrument, to actually assist us in how to structure it and how to design it. So it is continuous improvement but we have tried to ensure that we engage with relevant groups to help us write this thing, in its structure and its content.

THE CHAIR: In one of the submissions, minister, there was some concern raised about apparent inconsistency of public school sites being classified as sites for community use, other than supportive housing, but not private school sites. Do you have any clarification around that?

Ms Moser: Yes, I am able to provide some clarification on that. It goes back to the reason why it was introduced in the first instance for supportive housing. It was thought that there were private users that were not adequately utilising their land. I discussed church sites before. The same is considered to apply to the non-government school sector as well. There may be a time in the future where some of those sites are not being well attended et cetera and it would enable at those sites, if considered appropriate in terms of the rest of the code, uses such as supportive housing or other uses to be applied to those sites. The government does not have the same level of control over those and does not—and I am not speaking for the government—necessarily need the same level of control over those sites as it does to supply its own new schools in new areas. It is easier to determine the need for that. So it is for that reason that those school sites have not been included.

It was also largely to protect unleased territory land being sold to somebody and then they came back with a lease variation to have a facility that was not a community facility placed on that land where it was considered that there was some need for one. It was to protect, as much as anything else, the idea of unleased territory land being used for other purposes. Some of those more established uses in the private school sector could reasonably be expected to continue for some time into the future.

THE CHAIR: Thank you, minister and officials. We have come to the end of the hearing. Any other questions will be put in a timely manner. You have not taken any questions on notice. Thank you very much for your time this afternoon.

The committee adjourned at 2.28 pm.