



The New Planning Bill – overview

(Draft Planning Bill)

The Planning Bill sets the foundation for our reformed, outcomes-focussed planning system.



The Planning System Review and Reform Project presents many opportunities for reform that can enable the best planning system for the future of the ACT and Canberrans.

The Bill contains fundamental improvements to elements of the planning system and how it works, while keeping many existing processes and features that remain effective and are essential components of our planning system.

Draft legislation

The Planning Bill consultation package consists of the:

- Planning Bill
- Planning (General) Regulation
- Planning (Exempt Development) Regulation.

Planning Bill (see key elements below)

Planning (General) Regulation

- proposals requiring design review
- proposals requiring an EIS
- construction tolerances
- Provisions to support:
 - EIS and inquiry panel processes
 - development assessment process
 - leasing system processes

Planning (Exempt Development) Regulation

- types of exempt development
- Provisions to support:
 - exemption assessment process

Why does this matter?

Through the Planning Bill, we want to create a planning system which delivers for the people of the ACT. We want to be focussed on understanding the needs of our residents, planning for those needs, and then making sure that these needs are met.

This is about planning for the future – where people will live, how they will move around, how the natural environment will be protected and how our city will be resilient to the impacts of climate change.

The Planning Bill is important as it sets up the planning framework and processes which are needed when planning for the future and for new communities, for how we consider new buildings and how we can manage change in established areas. For example, this framework allows us to consider important matters like:

- how environment and traditional knowledge and culture are considered when we are planning for new communities

- how we inform people and get people involved in planning processes to be part of the decision-making
- how we set out what is expected for different types of housing
- how we consider what schools and other services are needed for new areas and existing areas undergoing change.





Key elements of the new Planning Bill include:

- an expanded object of the Act, setting up an outcomes-focussed system (Chapter 2)
- new ‘principles of good planning’ (Chapter 2)
- expanded functions of the Territory Planning Authority (Chapter 3)
- expanded strategic planning provisions, including the introduction of district planning through district strategies (Chapter 4)
- provisions establishing a new, outcomes-focussed Territory Plan (Chapter 5)
- efficient Territory Plan amendment process for government policy (where consultation has previously occurred) (Chapter 5)
- a clear process for proponents to propose amendments to the Territory Plan (Chapter 5)
- retention of design review (Chapter 6)
- simplified Environmental Impact Statement (EIS) process, with removal of EIS exemptions (Chapter 6)
- a streamlined development assessment system (Chapter 7)
- introduction of pre-decision advice on development applications (Chapter 7)
- broadened decision-making considerations for development applications (Chapter 7)
- introduction of processes for ‘Territory Priority Projects’ (Chapter 8)
- splitting the existing regulation into a standalone exempt development regulation and a general regulation (Exempt Development Regulation and General Regulation)
- greater use of the planning website to provide improved transparency and access to information on planning processes and decisions (throughout the Bill and Chapter 14)

Key principles

The Planning Bill has several key principles which have guided its development:

Easy to use

Easy to use – less layers, clear processes, simple language and better digital experience

Certainty

Certainty – of processes and requirements, and how applications will be assessed

Flexibility

Flexibility – for design approaches to meet planning provisions, flexibility for appropriate land use. * This does not mean a system with no rules, or the removal of key provisions such as building height limits in residential areas

Transparency

Transparency – more information available on processes and decisions, community participation in the planning system, website access to public register information

Outcomes-focussed

Outcomes-focussed – how the development works as a whole, rather than meeting minimum rules



Where to from here?

The Planning Bill is being released for a public consultation period of 3 months. The Government will consider the feedback received during the consultation period, before making any necessary changes and finalising the Bill. The Bill will then be presented to the Legislative Assembly later in 2022. The Bill will then be considered and debated by the Assembly, and if passed, commence in early 2023.



Where can I see the Bill and how can I comment?

The public consultation is now live on <https://yoursayconversations.act.gov.au/act-planning-system-review-and-reform>.

The consultation page contains the draft legislation, a policy overview paper, information factsheets and several options for providing written comments.



A broader object and outcomes focus

(Draft Planning Bill - Chapter 2)

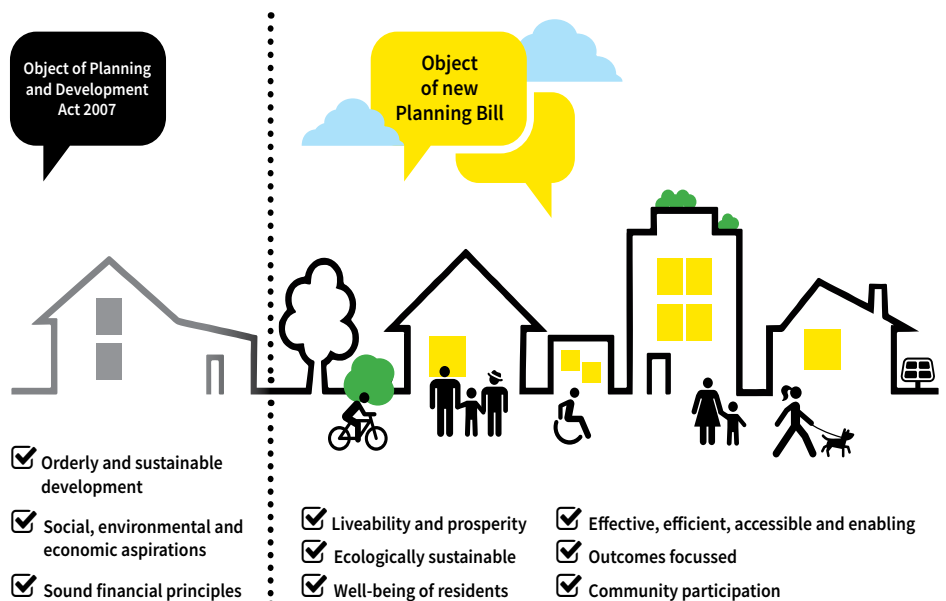
The 'object' of a bill describes its purpose and scope.

To support a reformed planning system in the ACT, we have broadened the object of the Planning Bill from the current Planning and Development Act 2007.

The broadened object provides a new starting point for thinking about planning in the Territory. It goes beyond the bricks and mortar focus to make sure the planning system delivers for the wide-ranging needs of all parts of the ACT community.

The new object shifts the focus of the planning system to how we can support and enhance the lives of people living in the Territory.

The reform process presents an opportunity to be more aspirational and consider the wider context of the planning system and its ability to deliver liveability, prosperity and the wellbeing of residents through good planning.



For the first time, the Bill also recognises the importance to the planning system of the knowledge, culture, and traditions of the Traditional Custodians of the land, the Ngunnawal people.



What is an outcomes-focussed planning system?

The new object says that our planning system will be 'outcomes-focussed'. An outcomes focus goes beyond the built form; it recognises the broader outcomes that can be achieved through the planning system, such as:

Wellbeing

Health

Recreation

Employment

Housing

Environment

Transport

This means the planning system is centred on quality, results and performance rather than compliance with prescribed technical rules.

At various points in the planning system, community views will be important to help set the desired planning outcomes for areas. This includes community involvement in the development of strategic and spatial plans, as well as public comments on development outcomes in the development application process.





How will the new planning system be different?

In the reformed system, the Territory Planning Authority will be more descriptive of what good planning outcomes are, and what the desired outcomes are for an area. This will be informed by strategic and spatial planning policy; desired planning outcomes will be set by the strategic planning and given effect through the Territory Plan and controls.

For developments, the focus will be on how the development performs from a range of considerations rather than a limited focus on whether it meets individual prescriptive planning rules. Developments must perform well in their site context. This includes, amongst other things, consideration of built form, public spaces and interactions with surrounding blocks.

Example: Under our current system, buildings are often designed with a focus on complying with minimum rules to achieve development approval. Often, a design doesn't add to and connect with its context. This can lead to missed opportunities and not the best development or community outcomes.



Under the new system, rather than prescribing how things need to be done, we will instead outline what the result or outcome needs to be. This will allow flexibility in how the result or outcome may be achieved.



● Namarag Nature Reserve in Molonglo – a planning outcome built around Ngunnawal culture and guided by Ngunnawal people.

What does this mean for planning rules?

Many provisions of the new Territory Plan will be written with an outcomes focus, but this doesn't prevent mandatory limits from being included where they are necessary and where they deliver the desired planning outcomes. For example, mandatory requirements for maximum building heights, site coverage or setbacks in residential zones can limit impacts on neighbours and public spaces and control unsuitable development.

A new planning authority

With a fundamental shift from a rules-based system to an outcomes-focussed system, it is necessary to establish a new planning authority to distinguish between the old and new systems. The new Territory Planning Authority will:

- keep its role as an independent decision-maker
- be led by the Chief Planner
- have increased functions, in line with the object of the Act, including to promote high quality design and good planning outcomes.

In practice, there will be little change to the role of the authority. However, the authority will have an increased role in advising on desired future planning outcomes and seeking improved development outcomes through the development application process (see chapter 3 of the Bill).





Strategic and Spatial Planning

(Draft Planning Bill - Chapter 4)

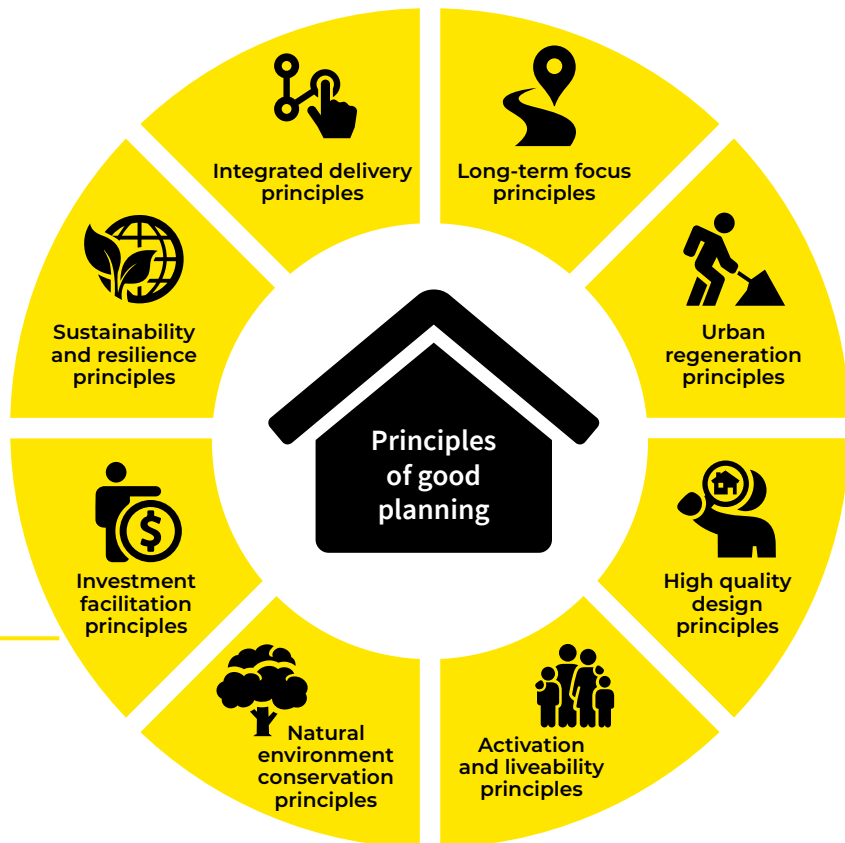
Planning plays an integral role in shaping our Territory. The new outcomes-focused planning system provides a framework through which the wellbeing of residents, liveability and prosperity will become the main priorities for planning in the ACT.



Emphasising the role of strategic and spatial planning will allow the ACT Government to be more active in guiding the future of the Territory. It will also provide a clearer way for Canberrans to participate in strategic planning in the ACT.

What is strategic and spatial planning?

The act of anticipating and influencing change in the Territory, focussing on what we need and where we need it. Amongst many other things, planning supports access to housing, employment, transport, education and health services by setting out anticipated infrastructure needs and transport corridors, earmarking sites for essential services and protecting open space for the benefit of our health and recreation. Strategic planning also allows us to identify land for urban development while protecting areas of environmental value.



● Principles of good planning

The task of planning is complex. The Planning Bill includes Principles of Good Planning that must be taken into account in strategic and spatial planning.

● Principles of good consultation

Community participation is a fundamental element of a good planning system. The Planning Bill proposes to introduce Principles of Good Consultation that will guide the various consultation processes in the Act and make sure that community views inform decision making.





Emphasis on strategic and spatial planning

The reformed planning system bolsters the important role of planning in shaping the Territory—providing a framework through which liveability, prosperity and the wellbeing of residents can be achieved.



Improved line of sight

Sometimes there is a disconnect and delay between new planning policy positions and what is reflected in the Territory Plan. This will be addressed in two ways:

- i. Strategic and spatial planning at the district scale
- ii. Simplified processes including more efficient ways to turn Government policy into planning requirements within the Territory Plan.

The planning strategy

The Planning Strategy is the key strategic planning document in the Territory. The Planning Strategy must set out the long-term planning policy and goals for the ACT, consistent with the object of the Act. It must also include an overarching spatial vision, strategic directions for the ACT and the desired future planning outcomes.

District strategies

District strategies are proposed to fill a disconnect between city-wide strategic planning and the detailed, site-specific Territory Plan.

A district strategy is a continuation of strategic and spatial planning at the district-level. District strategies will contain the long-term planning policy and goals for each of Canberra's districts and must be consistent with the planning strategy.

They will include strategies, spatial policies, and desired future planning outcomes for each district to guide and manage change in the future. They will set out principles and policies for development of areas within the districts, including future urban areas, and may identify areas where future detailed planning is needed.





A new Territory Plan

(Draft Planning Bill - Chapter 5)

The Territory Plan is the ACT's key statutory planning document.

A new Territory Plan will be developed as part of the Planning System Review and Reform Project.

Why do we need a new Territory Plan?

- **We need a new Territory Plan to give effect to our desired strategic and spatial planning outcomes.**

With the shift to an outcomes-focussed planning system, the rules and criteria approach within the current Territory Plan is no longer suitable.

We need a new Territory Plan that reflects our desired future planning outcomes and is accompanied by planning provisions that guide outcomes-focussed planning and development.

What will it look like?

The new Territory Plan will be made under the Planning Bill. It will be shaped to better reflect and deliver on the Government's planning policy and the core principles of the Planning Bill.

The content of the new Territory Plan will be informed through a review of the policy intent of existing planning strategies and policies and related Government strategies that can be given effect through the planning system. This includes opportunities to better integrate current Government policy into the new Territory Plan, such as the ACT Housing Strategy, the Climate Change Strategy and the ACT Transport Strategy.

The Planning Bill establishes a high-level framework for the important role of the Territory Plan in an outcomes-focussed planning system.

The Planning Bill requires the Territory Plan to contain:

- a map (the Territory Plan map) identifying districts and designating land-use zones in the ACT
- the policy outcomes to be achieved by the plan
- requirements and outcomes against which development proposals are assessed
- provisions that support compliance with requirements for undertaking development.



Australian Government legislation

The Australian Capital Territory (Planning and Land Management) Act 1988 (Cth) (PALM Act) applies to the ACT.

The PALM Act provides the object of the Territory Plan: **to ensure the planning and development of the Territory to provide the people of the Territory with an attractive, safe and efficient environment in which to live and work and have their recreation.**



Improved connection with Government strategies

The Planning Bill provides better connections between the Territory Plan and other ACT Government policies and strategies with planning-related outcomes. The Bill provides that these should be considered when making and amending the Territory Plan, and provides processes for these policies to be efficiently added to the Territory Plan so it reflects current Government policy.





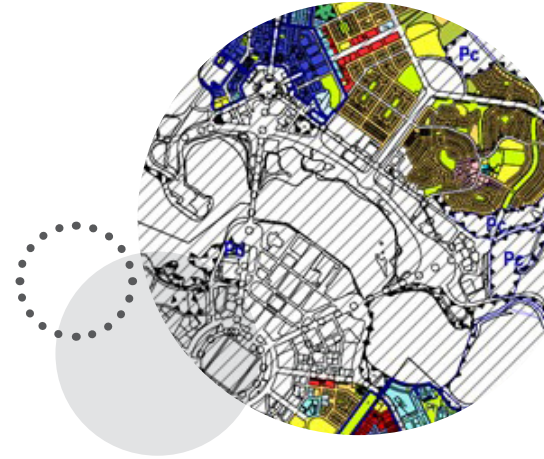
Under the Planning Bill, the new Territory Plan:

- must promote principles of good planning
- must give effect to the ACT Planning Strategy and district strategies
- may give effect to relevant outcomes related to planning contained in other Government strategies and policies.

This provides a more direct link between planning policies and the development of provisions within the Territory Plan.

The new Territory Plan will better reflect, protect and enhance the existing and desired character of our eight urban districts, with development provisions tailored to meet and reflect their unique characteristics.

A key feature of the new Territory Plan will be a clear and simple structure that focusses on achieving the policy intent. Another primary goal is to foster innovation and good design.



How will it be made?

The Planning Bill sets out the process for making the initial Territory Plan for the new planning system (see chapter 5). This includes:

- the Territory Planning Authority making a draft plan
- consultation on the draft plan
- ACT Government Executive and Legislative Assembly approval.

Where to from here?

At key points in the reform process during 2022, community members and industry experts will help us develop the new Territory Plan through dedicated technical and community reference groups. We'll also seek broader community engagement on the draft Territory Plan later in 2022, providing an opportunity for everyone to have their say on its make-up and content.





Amending the Territory Plan

(Draft Planning Bill)

At times, the Territory Plan may need to be amended to respond to changes in Government policy, achieve different planning outcomes, or to allow a lessee to do something which would otherwise not be permitted under the Territory Plan.

Continual review

Under the Planning Bill, the Territory Planning Authority is required to keep the Territory Plan under continual review and prepare and consider amendments to the Plan.

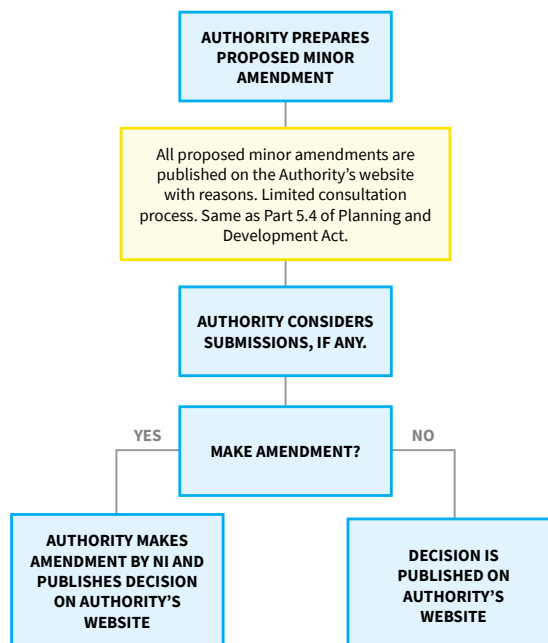


In addition to creating the Territory Plan, Chapter 5 of the Planning Bill provides statutory processes to amend the Territory Plan. Broadly, there are two types of amendments: minor and major amendments.

Minor amendments

Minor amendments to the Territory Plan are the same as technical amendments under the Planning and Development Act 2007. They are prepared and approved by the Territory Planning Authority following public notice and any required consultation.

MINOR AMENDMENT PROPOSAL



KEY

- CONSULTATION
- AUTHORITY



Major amendments

Major amendments to the Territory Plan are those approved by the Minister. They require public and National Capital Authority consultation, may be referred to a Legislative Assembly committee for consideration, and are subject to Legislative Assembly review and disallowance (for a five-day period).

A major plan amendment may arise three ways:

1. The Territory Planning Authority may initiate its own amendment
2. The Minister may direct the Territory Planning Authority to prepare an amendment
3. A proponent may apply for the Territory Plan to be amended

Proponent-initiated amendments

The purpose of including this new process is to increase transparency. Under the 2007 Act, there is no statutory process for a proponent to request an amendment; it occurs as a request to the planning authority and there is no certainty of process and timing.

A proponent seeking to amend the Territory Plan will have to apply to the Territory Planning Authority to consider whether to accept the proposed amendment for consideration based on criteria set out in the Bill.

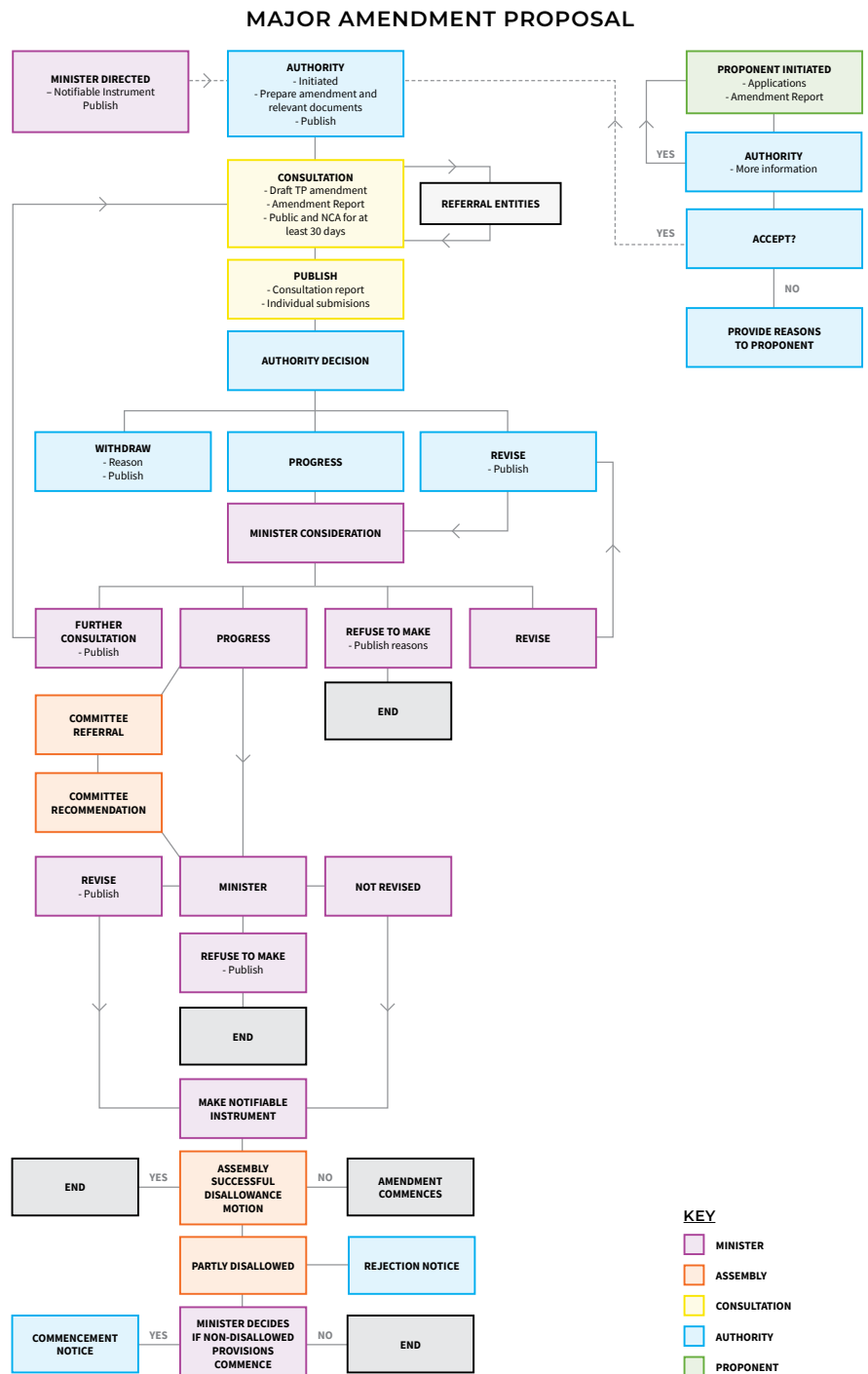
If accepted, the application and supporting information will be published on the Territory Planning Authority's website. Subsequent documentation (e.g. the draft plan amendment, public comments)

would also be published in accordance with the standard process for Territory Plan amendments.

Once accepted, the Authority will prepare a proposed amendment, undertake public and National Capital Authority consultation, and provide the proposed amendment to the

Minister for consideration. Please note that accepting an application does not require the Authority to implement the proposed amendment or implement it in the form proposed.

The following diagram shows the process for major amendments to the Territory Plan.





Formal Government policy amendments

An efficient and transparent pathway is proposed for Territory Plan amendments where the substance of the amendment has already had public consultation and been adopted as formal Government policy.

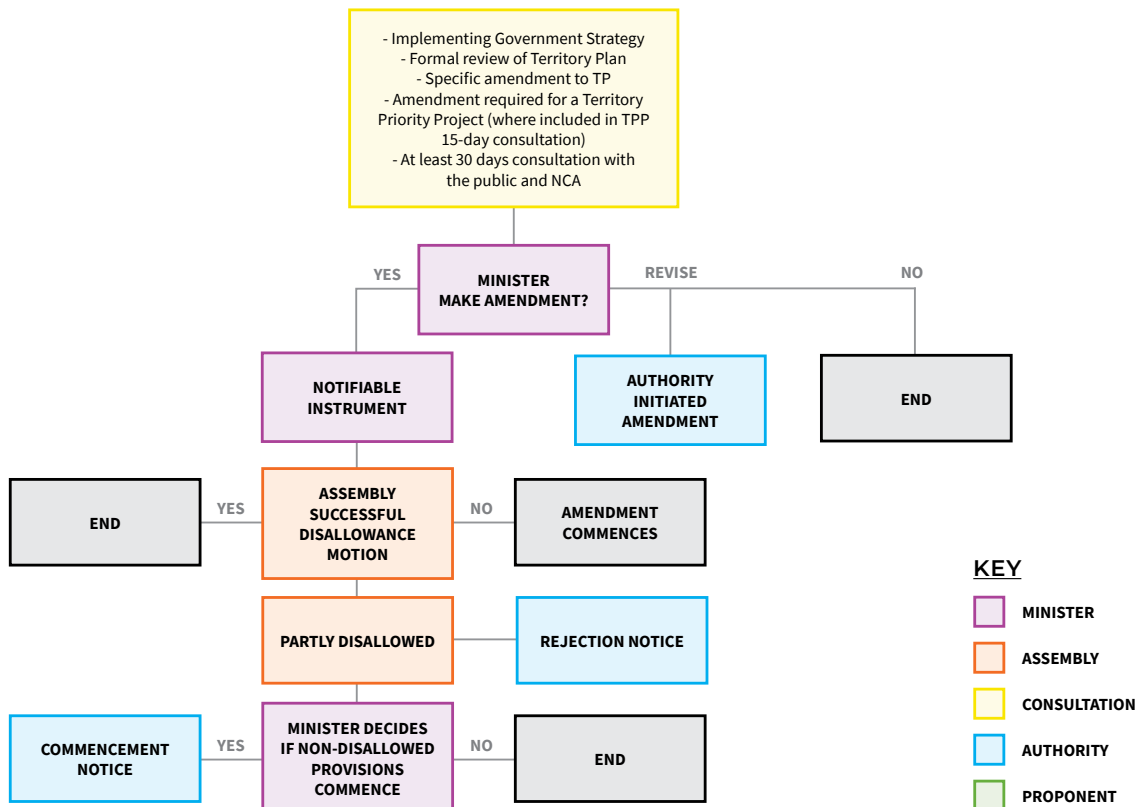
Following the approval of the Government strategy or policy, the Minister may make an amendment to the Territory Plan. Additional public consultation is not required if the proposed amendment was clearly

articulated within the Government policy document and sufficient public consultation was held on that policy document.

Our review found that the requirements of the 2007 Act sometimes resulted in duplication of consultation processes for Territory Plan variations. This often led to lengthy delays in implementing Government policy into planning requirements against which developments are assessed.

Under the new process, there would be no referral of the amendment to the Legislative Assembly committee for inquiry, reflecting that the amendment gives effect to formal and adopted Government policy. The Legislative Assembly would, however, retain its power to review and disallow a Territory Plan amendment prepared under this process.

MAJOR AMENDMENT PROPOSAL – GOVERNMENT POLICY





Development assessment and approvals

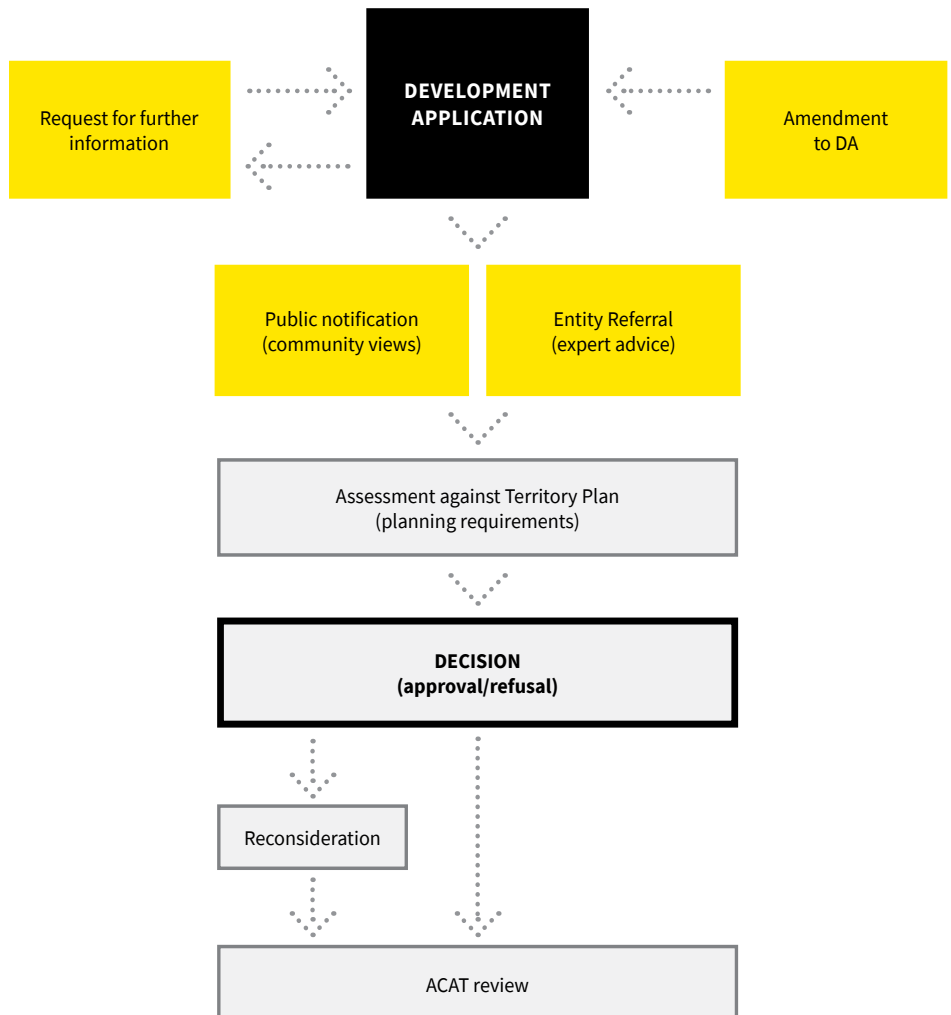
(Draft Planning Bill - Chapters 6 & 7)

A key function of the planning system is to provide a process for assessing development applications and granting development approvals in appropriate cases.



The assessment process under the Planning Bill is simpler than the process under the current Planning and Development Act 2007.

SUMMARY OF DEVELOPMENT ASSESSMENT PROCESS UNDER THE PLANNING BILL



Development assessment under the 2007 Act is largely focussed on compliance with planning rules and codes. The strict rules and criteria set out in codes reflect the prescriptive and regulatory nature of the current planning system.

The shift to an outcomes-focussed planning system required a rethink of development assessment processes. We wanted to make sure that the system allows for broader considerations when assessing a development and promotes good planning outcomes in our city (see more on outcomes-focussed planning below).



When is a development application required?

A development application (DA) is required for ‘assessable development’; that means development that is not exempt or prohibited.

What are the key features of the new development assessment process?

- Sufficient documentation—to show how a proposal meets all planning requirements
- Public consultation on DAs and a presumption that any amendment requires additional consultation
- Simplified timeframes, with time to decide the DA starting again where a DA is amended
- Expert ‘entity’ advice from all relevant utilities and government agencies
- The new concept of ‘significant development’
- Increased transparency, with documents available on our website
- Expanded decision-making considerations
- Pre-decision advice from the Planning Authority

Pre-DA consultation

Pre-DA consultation has been omitted from the Planning Bill because it is not working as planned. Instead, new ‘principles of good consultation’ are proposed to emphasise the importance of consultation and community input in the planning system—and to guide how consultation should occur in the new system.

Significant development

Significant developments are types of development that require additional documentation, process and assessment; namely developments requiring an environmental impact statement, estate development plan or advice from the design review panel.

Significant developments will have:

- additional documentation and assessment requirements
- additional time for notifying and deciding the DA.

The new system has a simplified environmental assessment process:

- Environmental impact statement (EIS) exemptions have been omitted
- Recent studies will be recognised through the EIS process
- All environmental assessment must start with a ‘scoping document’

Outcomes-focussed development assessment

The development assessment process will work with the new Territory Plan to enable a focus on outcomes.

The new outcomes-focussed Territory Plan will support improved development outcomes and allow for approval of design solutions where they meet the outcomes-focussed provisions of the Territory Plan.

Additional decision-making criteria have been incorporated into the Planning Bill to reinforce that the Territory Planning Authority should consider how a development performs when deciding whether it should be approved. For example, the Authority must consider:

- the suitability of the proposed development in the context of the site and site surrounds
- where the site adjoins another land use zone, whether the proposal achieves an appropriate transition between zones
- the interaction of any proposed development with any other adjoining or adjacent development proposals for which a development application has been lodged, or development approval has been given.



Territory Priority Projects

(Draft Planning Bill - Chapter 8)

The Planning Bill proposes the Minister for Planning and Land Management be given a new power to declare a proposal to be a 'Territory Priority Project'.



The Minister's power is available only where all the following criteria are met:

1. The proposal will provide critical infrastructure or facilities.
2. The proposal is likely to provide a significant benefit to the people of the Territory.
3. The project is time-critical.
4. There has been sufficient public consultation on the proposal.

What does this mean?

If the Minister declares a project to be a Territory Priority Project:

- a development application for the proposal must be decided personally by the Chief Planner
- the Chief Planner can depart from the Conservator of Flora and Fauna's advice in relation to registered trees, declared sites and protected matters in limited circumstances (however, advice from the Australian Government under the Commonwealth's Environment Protection and Biodiversity Conservation Act must always be followed)
- merits review*, through the ACT Civil and Administrative Tribunal, is not available
- judicial review is subject to a time limit.

*See the review rights factsheet for more information on merits review

Why do we need this process?

The proposed power recognises that important government projects that deliver public infrastructure and facilities, and limited private projects of public benefit, may justify a level of prioritisation and certainty to progress once development approval is given. Given the public benefit from these projects, the community will benefit from certainty that the project will not be subject to the delays, costs and uncertainties that are associated with third-party merits review and Supreme Court appeals.

Safeguards

- The Minister must undertake public consultation on a proposed declaration before making it.
- Any future development application must still comply with all requirements of the Territory Plan and the new Planning Act. This means a development application is subject to the same planning requirements as any other development proposal; it will be assessed in accordance with the general assessment processes, including public notification and entity referral.





What projects?

The power is intended to apply to significant projects that have been the subject of specific legislation or approved through Minister call-in powers in recent years. Examples of such projects include:

- light rail
- a mental health facility
- major hospital expansion
- electricity supply project
- new schools.

Proposals may be multi-stage or multi-site projects but must always be adequately described in the Minister's consultation notice.

What if a Territory Plan amendment is needed?

If a proposed Territory Priority Project requires an amendment to the Territory Plan, the Minister's declaration could identify that a Territory Plan amendment is required for the development proposal to proceed. Public consultation on the proposed Territory Plan amendment would occur through the Minister's consultation on the proposed Territory Priority Project declaration and have the benefit of the efficient amendment process for formal Government policy (see the factsheet on amending the Territory Plan for more information).

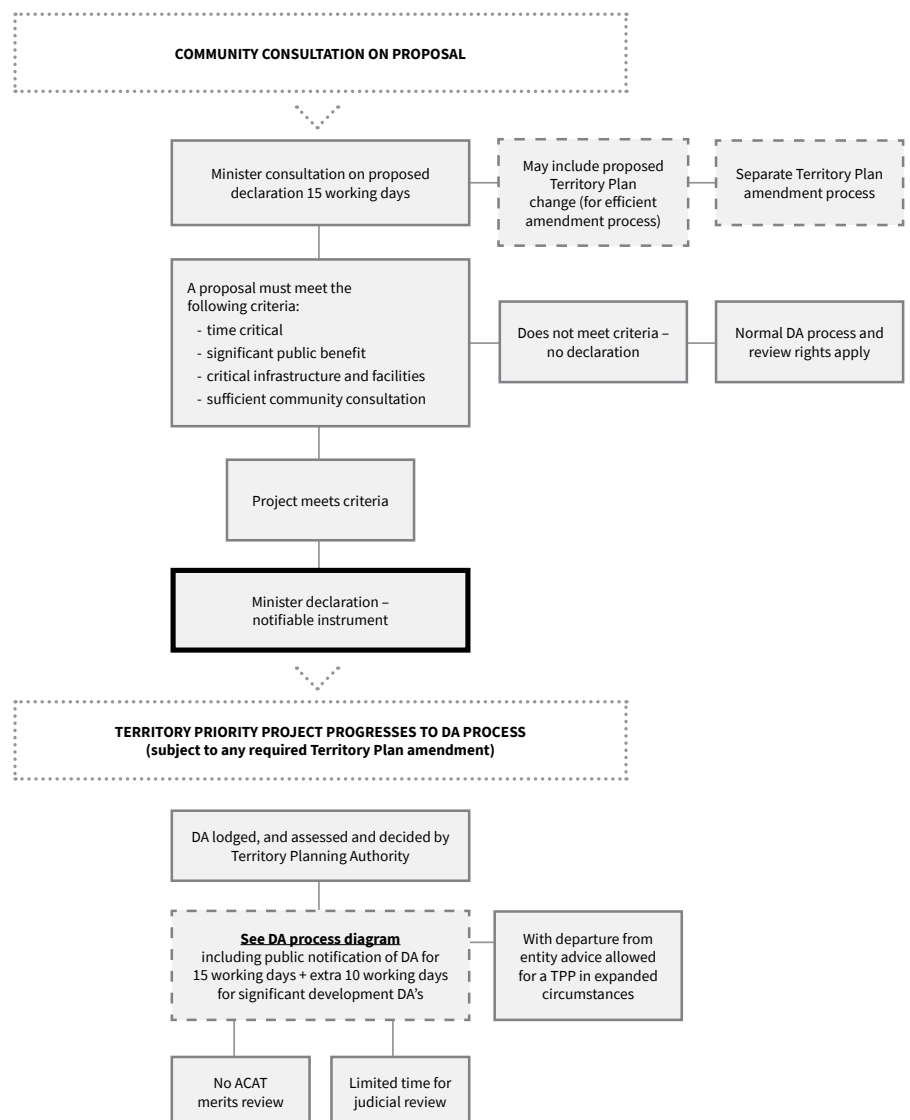
Removing Minister call-in powers

Under the 2007 Act, the Minister has a 'call-in' power, which means the Minister may direct the Planning and Land Authority to refer a development application to the Minister for consideration and potential decision. This recognises that some development applications raise important public policy issues, deliver key government infrastructure or are of increased interest to the community and that modified processes should apply.

Under the Planning Bill this power has been omitted and replaced by the Territory Priority Project process.

The process for declaring a Territory Priority Project is set out below.

TERRITORY PRIORITY PROJECTS PROCESS





Leases and licences

(Draft Planning Bill - Chapter 10)

Land in the Territory is held under Crown Leases. This is known as the leasehold system.



The leasing system plays two important roles in the Territory:

1. It is central to the system of title by registration, where proof of land ownership is provided through registration of Crown Leases (or other interests).
2. Leases regulate the use of land, predominantly through lease purpose clauses.

Our approach in the Planning Bill

The removal of the leasehold system was determined to be outside the scope of the Planning System Review and Reform Project.

Few changes have been made in the leasing chapter in the draft Planning Bill compared to the provisions of the Planning and Development Act 2007. The leasing chapter regulates the sale of Crown Leases and makes special provision for specified types of lease (e.g. a concessional lease) and particular lease clauses (e.g. building and development provisions). Most policy positions underpinning the leasing and licensing chapter remain effective and unchanged.

Removing concessional status of leases

Under the 2007 Act, the lessee of a concessional lease can apply to the planning authority to vary the lease and remove its concessional status.

The planning authority must refuse a development application to vary a concessional lease if the Minister for Planning and Land Management decides that considering the application is not in the public interest. In making the decision, the Minister must take into account various matters, such as:

- whether the proposed change would cause disadvantage to the community having regard to other potential assessable uses of the land
- whether the Territory should buy back or acquire the land
- whether the Territory should continue to monitor the use of the land.

The current legislative provisions are difficult to understand, and the distinct roles of the Minister and the planning authority are unclear. The Planning Bill revises the process.

Under the Bill, the Minister will determine whether it is in the public interest to remove the concessional status of a lease. The development application will be referred to the Minister for consideration and decision in accordance with specific criteria relevant to assessing the public interest. Those criteria will build upon the criteria in the 2007 Act and require the ACT Government Executive's approval.



Land use for other than leased purpose where public benefit

The use of lease purpose clauses to regulate land use in the Territory means that the use of land is regulated with a degree of inflexibility. There are circumstances where land needs to be used for purposes that are not set out in a Crown Lease.

The Planning Bill will allow the Territory Planning Authority to authorise, for a short-term period, the use of land for additional purposes where there is a significant public benefit and time criticality. The Territory Planning Authority may only authorise an extended use where it is satisfied that giving the authorisation is necessary, considering the urgent nature of the proposed use of the land.

Example: Following a huge hailstorm, land was needed to support the insurance assessment of thousands of cars; it was difficult to identify land that could be used for that purpose and there was a significant need affecting thousands of people in our community. The new power could be used to authorise using land for a short period to store, assess and process hail-damaged vehicles where it wouldn't normally be allowed.





Offences, compliance and enforcement

(Draft Planning Bill - Chapters 12 & 13)

Access Canberra exercises compliance and enforcement powers on behalf of the Territory Planning Authority.

The Access Canberra accountability commitments and compliance frameworks explain how Access Canberra makes regulatory decisions and approaches its role as both a service provider and a risk-based regulator, including what factors will be considered when dealing with non-compliance.

More information is available at <https://www.accesscanberra.act.gov.au/s/article/about-access-canberra-tab-access-canberra-accountability-commitment>.



The compliance powers available under the 2007 Act are generally fit for purpose and comprehensive. The Planning Bill will largely retain these provisions and processes, but we have sought to simplify processes and make them easier to understand.

Offences

The 2007 Act contains a series of offences, predominantly in relation to development. The substance of these offence provisions is proposed to remain unchanged. However, the offence provisions relating to development will be moved out of the development assessment provisions and placed into a consolidated development offences and controlled activities chapter. This will make these offences clearly identifiable and place them next to the compliance and enforcement powers in the Planning Bill.

Snapshot of offences in the Planning Bill:

- Undertaking development without approval
- Undertaking prohibited development
- Contravening a development approval or conditions





Controlled activity orders



What is a controlled activity order?

A controlled activity order may be issued to require a person to cease a controlled activity or to remedy damage done by a controlled activity. Controlled activities are set out in Schedule 5 of the Planning Bill.

The Planning Bill retains much of the controlled activity order process but will omit the concept of applications for a controlled activity order.

Presently, a person may apply to the Authority for a controlled activity order to be made, where the person thinks another person is conducting a ‘controlled activity’ (broadly, an action which is not allowed under a lease or is an offence under the Act). Unlike with the complaints process, the Authority has no discretion to dismiss the application if it is frivolous or vexatious, and cannot consider whether, having regard to Access Canberra’s risk-based regulatory model, compliance action is appropriate.

The Planning Bill will introduce discretion into the controlled activity order process. A person will be able to lodge a complaint in accordance with the existing complaints process. The Authority will then have discretion whether to consider making a controlled activity order. Discretion is considered necessary given that compliance and enforcement activities are resource intensive, and those limited resources should be allocated in line with the risk-based compliance policy. This formalises the important risk-assessment undertaken by Access Canberra in undertaking compliance functions on behalf of the Planning Authority.

Snapshot of controlled activity orders in the Planning Bill:

An order can be issued to require a person to:

- Not begin or carry out a development without approval
- Comply with a lease provision or development agreement
- Restore leased land or buildings
- Comply with development approval or conditions
- Demolish a building or structure constructed without approval/permission
- Apply for development approval
- Clean up a leasehold and keep it clean
- Comply with a land management agreement

Enforcement

The enforcement chapter of the Planning Bill (Chapter 13) sets out the provisions enabling enforcement to be undertaken. This chapter provides for: the appointment of inspectors and their powers of entry; the Authority’s power to require information; seizure, forfeiture and return of seized items, search warrants and monitoring warrants; and rectification works orders.

The provisions of the 2007 Act are fit for purpose in supporting compliance and enforcement action, so the Planning Bill retains the provisions of the enforcement chapter.





Exempt Development and Exemption Declarations

(Draft Planning Bill)

The planning system currently allows low-risk development to occur without development approval. This is called exempt development. Things like garden sheds, clothes lines and single dwelling homes may be exempt when certain requirements are met.



Exempt development allows the planning system to operate more effectively.

The new planning system creates a standalone Exempt Development Regulation, which will make it easier to find out about the types of exempt development.

What's different?

Given the regular use of exemptions by the development and building industries, the approach through the reform process has been to prioritise certainty over change, with change happening only where necessary. Minor changes to some of the existing provisions have been made to make them clearer.

The General Exemption Criteria will also remain as they provide important safeguards for exempt works and require other regulatory schemes to be considered before exemptions can apply.

New exemptions

Murals

A new exemption has been added to allow some murals (street art) to be painted on to buildings without development approval. This reflects a desire to support street art, which adds to the vibrancy and attractiveness of the city. The new exemption contains important limitations to protect against offensive or unsightly murals, and potential driver distraction.



Minor utility works

A new exemption for minor utility works exempts minor works that are necessary for utilities to support essential services to the community, such as fences around their facilities, lighting, modifications to existing infrastructure and excavation for exempt work. The new exemption contains important limitations to protect against impacts to nearby residents and the public including, where relevant, height and plan area limits, a limit on distance to residential blocks, written public notice and compliance with other regulatory schemes.





Exemption declarations

Single dwellings may be exempt from requiring development approval under the current planning system where they meet the requirements of the Single Dwelling Housing Development Code (and other required criteria).

An exemption declaration is a type of minor approval that can be issued by the Territory Planning Authority. It allows a single dwelling, which would be exempt except for one or more minor departures from the requirements (called encroachments), to continue to be dealt with as exempt development. For example, to depart slightly from the boundary setback requirements or the need to provide open space on your own block.

This minor approval process allows many developments to avoid the lengthy and expensive development application process in circumstances where the minor departure is unlikely to have an adverse impact on anyone but the owner of that house.

Under the current legislation, the planning authority can declare a dwelling to be exempt even with a minor departure from the rules of the Single Dwelling Code. In all cases, the departures must be consistent

with the applicable criteria under the Single Dwelling Code and the planning authority must be satisfied the departures are minor and will not adversely affect neighbours.

Exemption declarations have caused concern amongst some community members who believe there is a lack of transparency around the issuing of exemption declarations. Sometimes neighbours tell us they are impacted by an encroachment.

These concerns have been considered and weighed against the important role exempt development and exemption declarations play in keeping low-impact developments outside of the development assessment process. It is proposed they will remain in the new Exempt Development Regulation but with additional transparency measures and a change for solar encroachments.

The draft Regulation also introduces an expiry for exemption declarations. Exemption declarations will be effective for 36 months (i.e. the exempt development must happen during this period), or such longer period as is specified in writing by the planning authority.

Increasing transparency

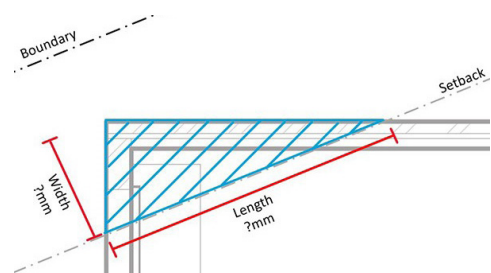
The draft Exempt Development Regulation aims to increase transparency where exemption declarations are issued:

- The Territory Planning Authority may only make a declaration where it is satisfied the requirement to provide information to neighbours has been met.
- Neighbours will be entitled to receive:
 - site plans
 - elevation plans
 - shadow diagrams where an encroachment into the solar building envelope is proposed.

Limits for solar building envelope

The draft regulation provides that encroachments into the solar building envelope may only be the subject of an exemption declaration where the encroachment does not cause shadowing to any habitable room or principal private open space of another block. This will protect neighbours and make clear that exemption declarations that relate to encroachments into the solar building envelope are only available in very limited circumstances.

Example: An encroachment (blue area) into the area between the boundary line and the setback line. An exemption declaration could be issued to approve this encroachment.





Review of decisions

(Draft Planning Bill - Chapter 15)

The Planning Bill provides opportunities to seek review of decisions made under the proposed Act. Under the merits review process, certain people or organisations can seek a review of decisions made under the Act.

What is merits review?

Merits review is the impartial review of a decision by a different decision maker.

Merits review under the Planning Bill is available in two ways:

1. reconsideration by another member of the Territory Planning Authority (applicants only), or
2. external review by the ACT Civil and Administrative Tribunal (ACAT) (applicants and third parties).

A third party (e.g. a person who has made a representation on a development application) can seek ACAT merits review in certain circumstances.

Reconsideration

The Planning Bill retains the reconsideration process as an important accountability and review feature. Where the Territory Planning Authority refuses a development application, or approves it with conditions, the person applying for approval may seek internal review of the original decision.

Our approach to ACAT review in the Planning Bill

If an application is made to the ACAT for review of a decision made under the Planning Act, the ACAT would have the same powers to assess the merits of the matter and make a decision as the original decision maker (i.e. the Territory Planning Authority). The term often used to describe this principle is that the ACAT 'stands in the shoes' of the original decision maker.

The Planning Bill departs from the approach of the 2007 Act, which limits the ability of the ACAT to review all parts of the original decision.

The Planning Bill facilitates a shift to an outcomes-focussed planning system. The focus of decision-making under the Planning Bill is the achievement of good planning and development outcomes, not compliance with quantitative and prescriptive rules. In this context, review by the ACAT should involve review of the whole of a development application on its merits.

What decisions are reviewable by ACAT?

The Planning and Development Act 2007 identifies decisions that are reviewable by ACAT. The Planning and Development Regulation 2008 lists those decisions that are exempt from third-party review. Those provisions apply in conjunction with relevant provisions of the ACT Civil and Administrative Tribunal Act 2008.

The Planning Bill keeps the fundamental approach for review of decisions. It identifies the decisions that are reviewable and who can apply for review (see schedule 6 of the Bill) as well as the exemptions from those general provisions (see schedule 7 of the Bill).





What has changed?

A key approach of the Planning Bill is to identify categories of decision that are exempt from third party review in the Bill, rather than in the regulation. The shift to specifying the exemptions within the Planning Bill promotes transparency and certainty.

The categories of reviewable decision that are exempt from review have also been simplified and realigned to meet the new outcomes-focus of the planning system (see schedule 7 of the Bill).

Developments in the city centre, a town centre, industrial zone or Kingston Foreshore continue to be exempt from third-party merits review, except where an environmental impact statement is required.

Developments in other non-residential zones will be exempt where a set of criteria is met. Amongst those criteria are:

- the development must be at least 50 metres from a block within a residential zone
- if the development involves any construction of or alteration to a building or other structure on the land, any new or altered building or structure on the land meets the quantitative requirement for any applicable height and plot ratio provisions
- no environmental impact statement is required.

This means that where fundamental planning requirements relating to height and plot ratio are met, and a development is not close to a residential block, a decision on a development application may be exempt from review. Where key quantitative measures within the Territory Plan are met (e.g. a three storey height limit, or a 50% plot ratio limit), the proposal is delivering an intended development outcome and should not be subject to review. Approvals for proposals that do not meet the key quantitative requirements are more likely to be based on a qualitative assessment of the proposal's compliance with planning requirements outcomes; as such, review is available.

Comparison to 2007 Act

Seventeen items were listed as exempt from review under the Planning and Development Regulation 2008. Schedule 7 of the Planning Bill contains eight items and a significant simplification of the items. This means it is easier for users of the planning laws to identify whether a decision is reviewable or not.

The changes are expected to give rise to a modest change to the number of decisions that are reviewable by the ACAT. Due to the minor realignment, it is expected that a small number of decisions that are reviewable under the existing legislation will not be reviewable under the Planning Bill.





Increasing transparency in the planning system

(Draft Planning Bill)



Transparency is a necessary feature to build trust and confidence in the planning system and complements the increased flexibility and shift to an outcomes focus in the reformed system.

One of the key principles that has guided the development of the new Planning Bill is to increase transparency in the planning system.

The Planning Bill explores ways to make processes and decision-making more transparent. This includes making more use of the Territory Planning Authority's website to provide easier access to information.

Transparency is also reflected through improved engagement with the community at important stages of planning and by communicating in a clear way.



Principles of good consultation

Community participation is a fundamental element of a good planning system. The Planning Bill proposes to introduce Principles of Good Consultation that will guide the various consultation processes in the Act and make sure community views are central to decision making.

Public consultation

Public consultation is a central feature of the ACT's planning framework. An object of the new Planning Bill is to create a planning system that provides a scheme for community participation. The public will be consulted on and invited to provide comment on the following, amongst other planning processes:

- Developing the Planning Strategy and district strategies
- All draft major amendments and some minor amendments to the Territory Plan
- Draft review report of the Territory Plan
- Draft EIS applications
- Development applications
- A proposed declaration for a project to be a Territory Priority Project
- Draft revised offsets policy
- Draft Offsets Policy Guidelines
- Draft Land Management Plans





Information published on the planning website

The Planning Bill introduces several new requirements for advice, decisions and information to be published on the Territory Planning Authority's website. The website is proposed to become a central source of information on planning matters. This means that community and industry members can go to a single website to access all the information they need about planning in the Territory and current and past applications.

Examples of what must be published on the planning website under the Planning Bill include:

- **Strategic documents**
 - Ministerial directions
 - ACT Planning Strategy
 - District strategies
 - Statement of Planning Priorities
 - Territory Plan
- **Territory Plan amendments**
 - Proponent applications to amend the Territory Plan that have been accepted
 - Proposed major amendments to the Territory Plan
 - Public consultation comments
 - When proposed amendments are given to the Minister
 - The Minister's decision on proposed amendments
 - Proposed minor Territory Plan amendments
 - The Minister's decision to review the Territory Plan or to delay its review
- **Development assessment**
 - National Capital Design Review Panel Rules
 - Applications for an environment impact statement (EIS) scoping document
 - Draft EIS and representations on a draft EIS
 - EIS assessment reports
 - Finalised EISs
- Environmental significance opinions (ESO)
- Declarations for development encroaching on Territory land if development is prohibited
- Development Application (DA) documentation guidelines
- DA documents, plans and reports
- Further information requests for DAs and the applicants' responses
- Amendments to DAs
- Any pre-decision advice by the planning authority on DAs
- DA notices of decision
- Reconsideration applications
- Amendments to existing development approvals
- **Public consultation notices of projects being considered for declaration as Territory Priority Projects**
- **Offset Management Plans**
- **Statements of reasons of the granting by direct sale of community leases**
- **Land Management Plans**
 - Consultation notice of draft Land Management Plans
 - Submissions about draft Land Management Plans
 - Rejection notices of the Minister rejecting draft Land Management Plans
- **Public Register and associated documents.**

Exemption declarations on Public Register

Following feedback from the community during engagement on the Planning System Review and Reform Project, exemption declaration documentation will be added to the public register as an increased transparency measure. This will mean that plans submitted to the planning authority, and the authority's decisions, will be publicly available. These documents will be able to be provided to the public without the need for a request for documents under the [Freedom of Information Act 2016](#).





Transitioning to the new system

(Draft Planning Bill)

As we reform the planning system, we need to end the current system and move forward with the reformed system. This means the current Planning and Development Act 2007 and Territory Plan 2008 will come to an end and the new planning system, set up by the new Planning Act, will commence.

To have a successful changeover, ‘transitional provisions’ are being drafted to move from the current system to the reformed planning system.

Without transitional provisions, things that were approved, granted, or made under previous legislation will have no legal effect under the new Planning Bill.

Transitional provisions must deal with many legacy issues, such as the granting of leases and development approvals under previous legislation. They will ensure the many processes and approvals that need to continue will do so, as if they were part of the new system.

Generally, where a statutory process, application, decision etc. from the Planning and Development Act 2007 has a continuing role in the new system under the new Planning Act, it will be transitioned.

The transitional provisions are not included as part of the consultation draft of the Planning Bill. However, they will be included when the legislation is introduced into the ACT Legislative Assembly.

Examples of matters requiring transitional provisions

- Leases and licenses which have been granted, and applications to renew
- Development approvals
- Land Management Plans
- Relevant instruments required in the new Planning Bill

New instruments will need to be made under the new Planning Act so it can operate most effectively.

Territory Plan variations

The Authority will continue to consider proposed policy changes whether as a variation to the current plan or as a policy input into the new Territory Plan.





Development applications

As the Planning Bill changes the planning system, development applications made under the Planning and Development Act 2007 will not meet the requirements of the new system. This is because the development assessment process is changing and there will be a new outcomes-focussed Territory Plan, with new planning requirements.

The development application, assessment and approval process under the current Act will need to continue for applications lodged before the current Act ends and the new Act commences:

- Development applications lodged after commencement of the new Act (likely early 2023) will be assessed under the new system.
- Development applications lodged before commencement of the new Act will be assessed under the Planning and Development Act 2007 and the Territory Plan 2008. An applicant may withdraw a development application and lodge a new development application under the new system provided by the new Planning Act.

How development applications will be assessed in transition from 'old' to 'new' system

