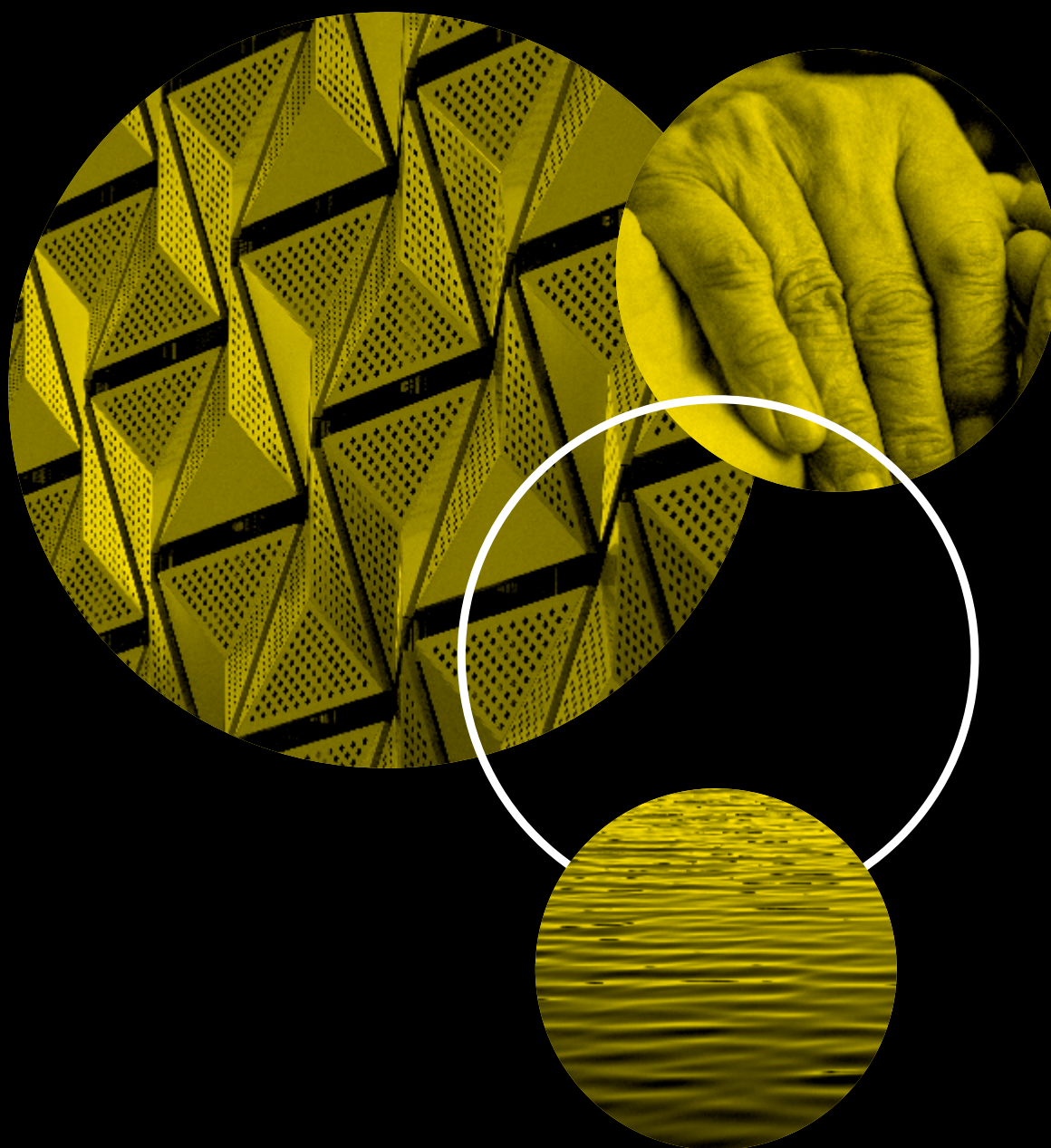


ACT Planning System Review and Reform

November 2020



PAPER 3

Development Controls



Acknowledgement of Country

Yuma

Dhawura Nguna Dhawura Ngunnawal

Yanggu ngalawiri dhunimanyin Ngunnawalwari
dhawurawari

Nginggada Dindi yindumaralidjinyin

Dhawura Ngunnawal yindumaralidjinyin

Hello,

This is Ngunnawal Country

Today we are meeting on Ngunnawal country

We always respect Elders, male and female

We always respect Ngunnawal Country

The Environment, Planning and Sustainable Development Directorate acknowledges the Ngunnawal people as Canberra's first inhabitants and Traditional Custodians. We recognise the special relationship and connection that Ngunnawal peoples have with this Country. Prior to the dislocation of Ngunnawal people from their land, they were a thriving people whose life and culture was connected unequivocally to this land in a way that only they understand and know, and is core to their physical and spiritual being. The disconnection of the Ngunnawal people from Culture and Country has had long-lasting, profound and ongoing health and well-being effects on their life, cultural practices, families and continuation of their law/lore. The Environment, Planning and Sustainable Development Directorate acknowledges the historic dispossession of the Ngunnawal people of Canberra and their surrounding regions. We recognise the significant contribution the Ngunnawal people have played in caring for Country as for time immemorial they have maintained a tangible and intangible cultural, social, environmental, spiritual and economic connection to these lands and waters.

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Director-General, Environment, Planning and Sustainable Development Directorate, ACT Government, GPO Box 158, Canberra ACT 2601.

Telephone: 02 6207 1923

Website: www.planning.act.gov.au

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ACT Planning System Review and Reform

Paper 3 / Development Controls



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1. Introduction

1.1 Review and reform of the ACT planning system

Over the next 20 years Canberra's population is expected to increase by more than 40 per cent. The city needs a planning system that can facilitate this growth without compromising the characteristics of the city that its residents value. Importantly, it needs a planning system that can deliver on the long-term vision for Canberra to be a city that is liveable, sustainable, resilient and diverse.

Compared to other parts of Australia facing similar challenges, the Australian Capital Territory (the ACT) is uniquely placed to innovate and implement change. It has a single tier of government that spans the entire urban area of Canberra, where many cities have multiple councils and state government. While the current planning system is working, the ACT Planning System Review and Reform project (the Project) presents an opportunity to evolve the system in line with contemporary best practice. The project will deliver a proactive and responsive planning system that further enhances Canberra's strong international reputation.

The Environment Planning and Sustainable Development Directorate (EPSDD) began the three-year process of reviewing and reforming the planning system in January 2019. Beyond the need to effectively manage growth, the Project has been driven by the need to conduct a five-yearly review of the Territory Plan. This includes the review of the strategic directions and actions

outlined in the ACT Planning Strategy 2018 and concerns from community, industry and the government with respect to the development outcomes that the current planning system is facilitating.

The desired outcome of the Project is to implement a **clear, easy to use** planning system that delivers **improved spatial and built outcomes** across the Territory. In particular, the reformed system should:

- facilitate development and housing supply while protecting those aspects of the city that make it an attractive place to live
- instill confidence in the community through greater clarity and expression of desired outcomes
- enable greater flexibility in the assessment of varying development types.

The purpose and objectives of the Project are described in Figure 1.

Figure 1: Project purpose and objectives

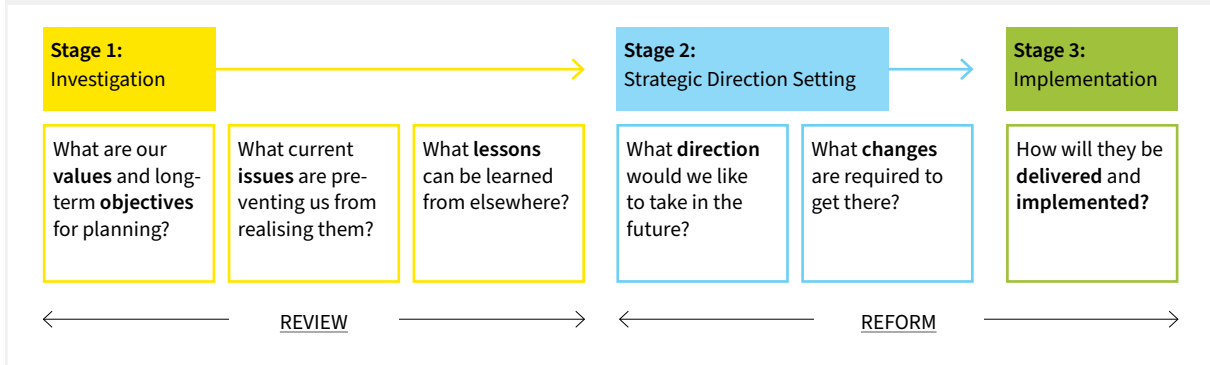
Project purpose

To deliver a planning system that is clear, easy to use and that facilitates the realisation of long-term aspirations for the growth and development of Canberra while maintaining its valued character.

Project objectives

- Enabling the sustainable growth of the city without compromising its valued character
- Providing clarity of processes, roles and outcomes for the city's community
- Providing flexible assessment pathways that are appropriate to the scale and scope of development

Figure 2: Project stages



The Project has been structured around a three-stage process that progressively defines and implements the preferred future direction for the ACT planning system (see Figure 2).

Stage 1—Investigation was undertaken throughout 2019. More than 1000 people’s views were gathered through targeted community engagement, in addition to feedback from a range of consultation undertaken in recent years. This was critical to understanding what the community’s values and expectations were, and to identifying the issues and challenges with the existing system. Further, Stage 1 involved benchmarking of the existing system against contemporary examples from cities and states elsewhere in Australia and internationally. This enabled the team to investigate a range of approaches to responding to the issues and challenges currently faced in the Territory.

The Project is currently within Stage 2, which involves direction setting and identification of a clear scope for proposed change.

1.2 Focus areas for reform

As identified in the ACT Planning System Review and Reform Overview, Stage 1 identified five interrelated focus areas to be addressed as part of the review process. This paper is the third in a series of five and covers the proposed directions for reforming development controls (see Figure 3). Development controls are the main operational component of the planning system. They address what types of development can go where and what it should look like. Good development controls should clearly translate broad policy directions into a set of practical standards for development that ensure development outcomes are consistent with long-term policy directions and respond to the expectations of the community.

Development controls are contained within the Territory Plan. They include land use zones, zone objectives, development codes, general codes, precinct codes, overlays and structure plans.

Figure 3: Five papers on the focus areas

FOCUS AREA 1 / SYSTEM STRUCTURE

The hierarchy of the various components of the system as well as their individual roles and interrelationships

FOCUS AREA 2 / STRATEGIC PLANNING

The long-term strategic or policy objectives that describe the purpose and direction of the planning system

THIS PAPER

FOCUS AREA 3 / DEVELOPMENT CONTROLS

The interpretation of strategic and policy objectives into regulations that define and shape development

FOCUS AREA 4 / DEVELOPMENT ASSESSMENT

The processes through which development applications are assessed and determined

FOCUS AREA 5 / SYSTEM OPERATION

The useability of the system from the perspective of applicants, agencies, and other interested parties

1.3 Guiding principles for development controls

The following guiding principles (GP) for development controls support the delivery of the overarching Project objectives.

GP1. That the system structure link and give rise to directions provided through strategic planning.

GP2. That the system structure enable clear, consistent, and well-reasoned decision making.

GP3. That the system structure enable the community to practically understand development outcomes permissible in its local area.

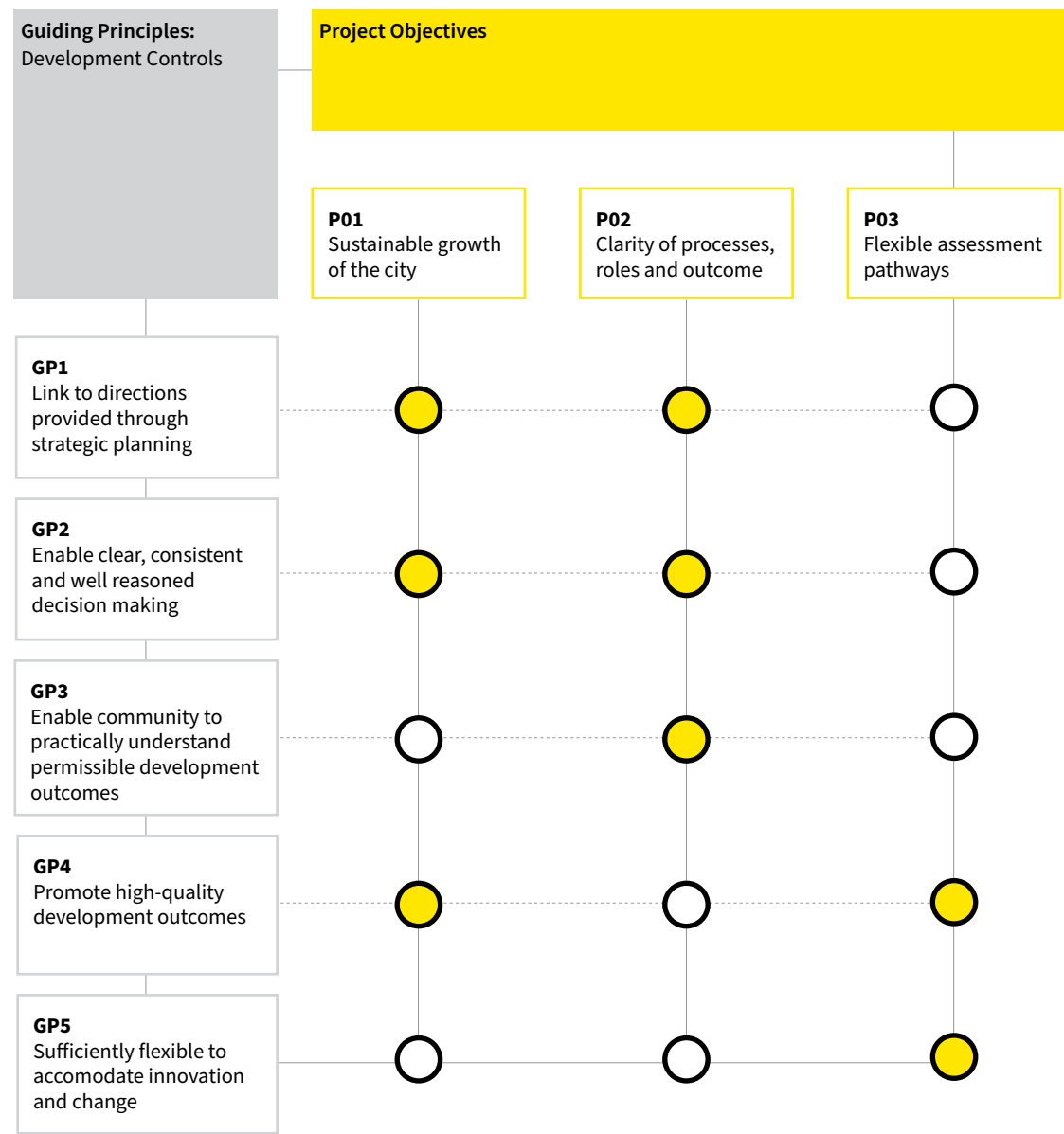
GP4. That the system structure promotes high-quality development outcomes.

GP5. That the system structure is sufficiently flexible to accommodate innovation and change.

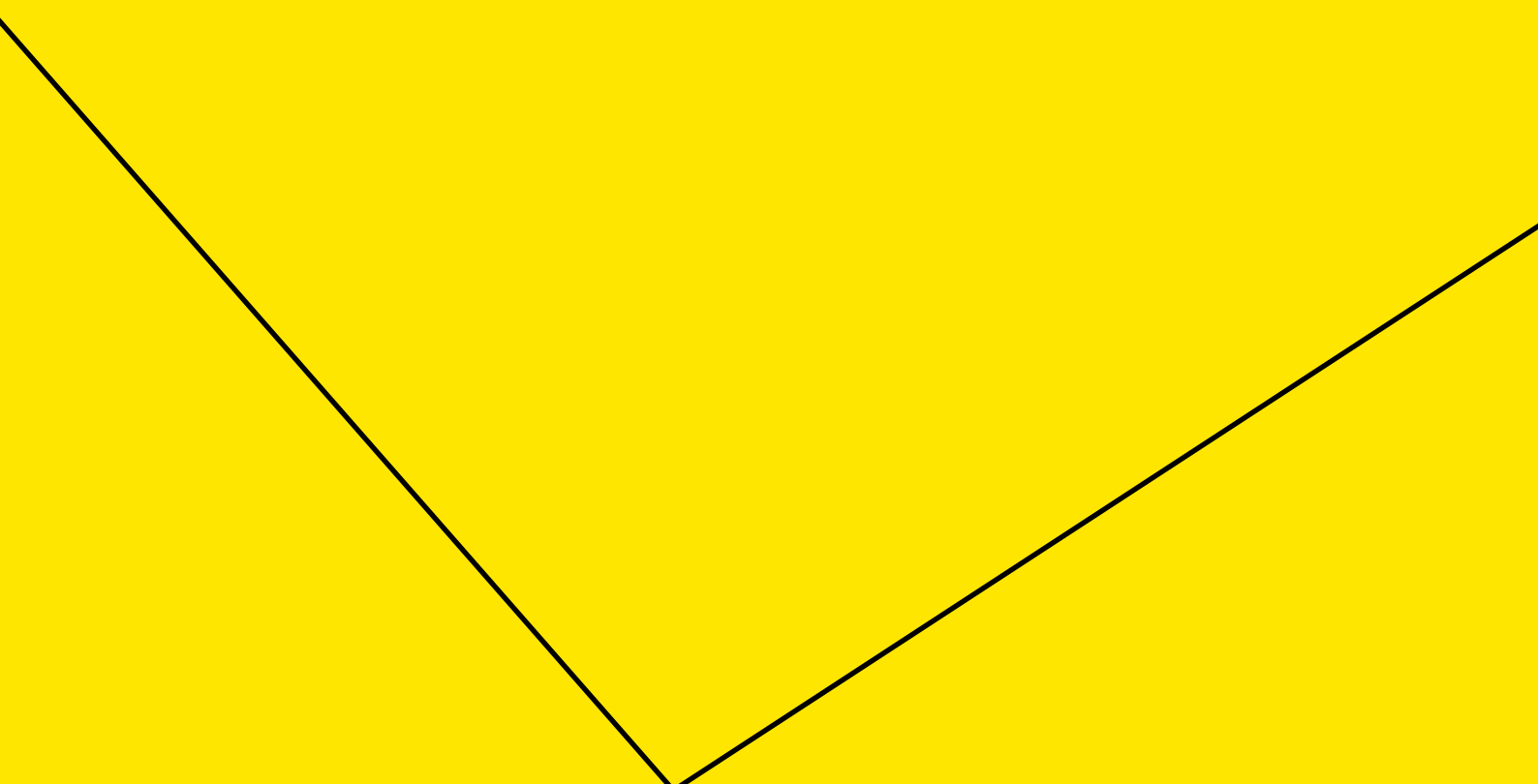
These have been mapped in Figure 4 to demonstrate the relationship between development controls and the broader objectives for the Project.



Figure 4: Relationship between Project context and development controls



2. Review of the existing development controls



2.1 Background

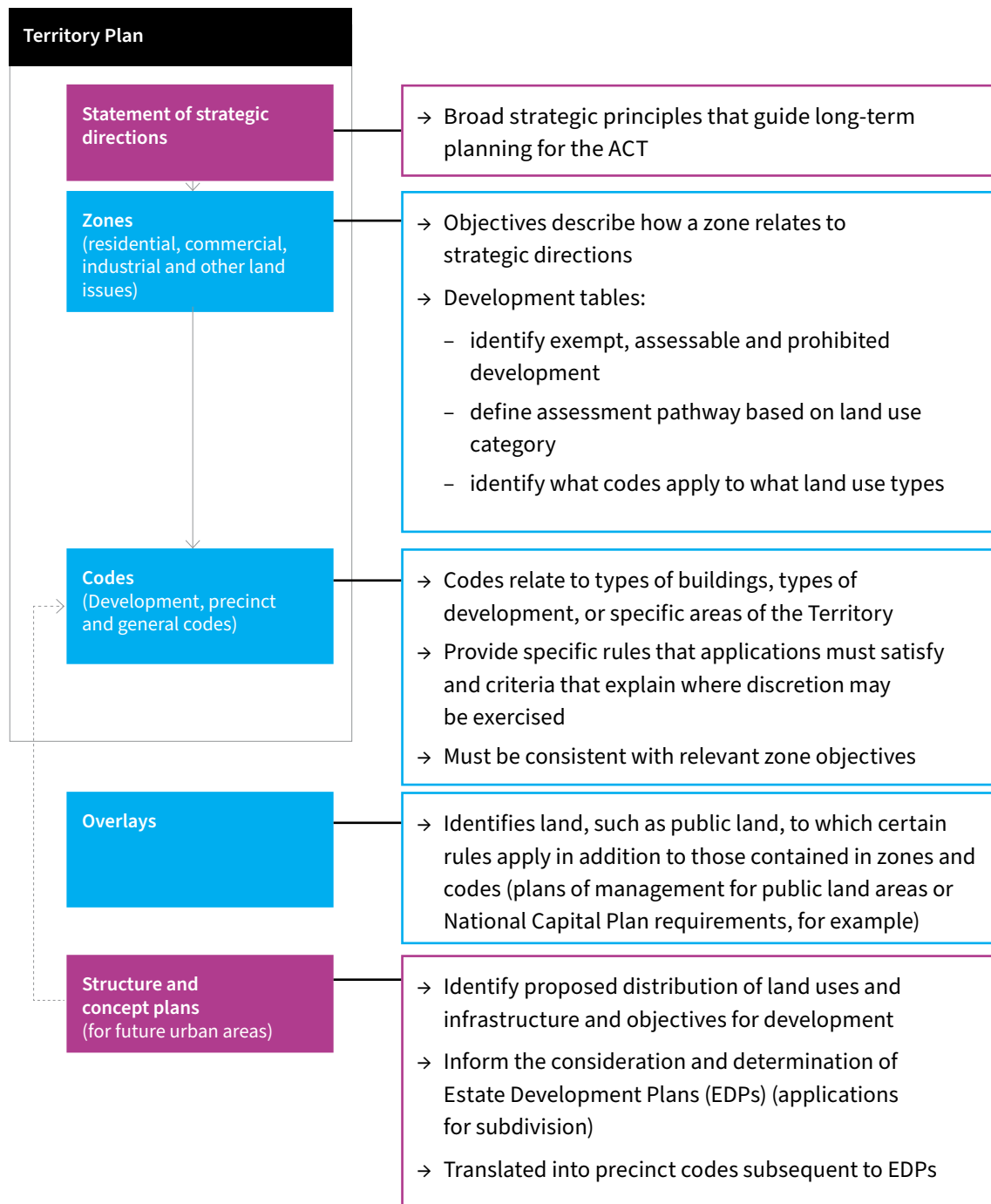
Paper 1—System Structure identified how the planning system can be considered in terms of strategic and statutory elements. Statutory elements are described as those parts of the planning system that direct and regulate changes of land use and development including the processes through which these changes are considered and determined. Throughout this and the other four papers the instruments, regulations, zones, codes and other controls that comprise statutory elements of the system are collectively referred to as development controls.



The primary statutory element of the planning system and therefore its development controls is the Territory Plan. The Territory Plan includes a Statement of Strategic Directions—notionally linked to the Planning Strategy—that sets out the broad principles that guide land use and development. It also includes a range of other controls that give those directions effect.

The primary controls are 23 land use zones that describe how land across the Territory can be used and what can be developed. Development tables within the zones describe the types of uses that do and do not require a development approval, and uses that are prohibited. Zones also identify applicable development codes, which set out the standards (expressed as rules and criteria) that different types of buildings must meet.

Figure 5: Parts of the Territory Plan



These zones and development codes are complemented by additional codes that set out standards for other types of development, such as carparks and signage (general codes), and provide standards that are specific to a local area (precinct codes). The Territory Plan also includes overlays that provide supplementary controls for particular areas—such as ‘future urban areas’ or public lands that require ‘plans of management’—and structure plans that set out development principles for future urban areas.

Structure plans and concept plans, discussed in Paper 2—Strategic Planning, are also included within the Territory Plan despite not being traditional development controls (see Figure 5). These plans have temporary effect, guiding the consideration of estate development plans in future urban areas before being translated into precinct codes that guide subsequent building and development.

2.2 Development controls gaps and challenges

Areas where our planning system can be improved

Certainty of process and outcome has been an aspect of the current system that stakeholders support. In this respect, the existing development controls are successful. The controls make clear what is acceptable and what is not. However, current development controls may not be positioned to encourage innovation or high-quality design and thereby serve the Territory well into the future. Challenges include:

- limited line-of-sight from planning strategies to development controls, making it difficult to understand the strategic intent of zones and codes as well as the outcomes they are seeking to facilitate
- limited controls to manage areas of change, such as those areas identified for urban intensification in the Planning Strategy
- static rules that do not easily accommodate

change in how people live and the way businesses operate

- codes that are increasingly out of date, not having kept pace with evolving government policy.

Limited line-of-sight from policies to controls

The *Planning and Development Act 2007* describes how development controls are intended to give rise to policy outcomes. For example, it states that “the objectives for a zone set out the policy outcomes intended to be achieved by applying the applicable development table and code to the zone” (s53). However, Paper 1—System Structure identified that the system structure does not support a strong relationship between planning strategies and development controls, reducing the extent to which long-term policy directions are currently reflected in the Territory Plan.

The structure and content of the Territory Plan itself further reduces the line-of-sight from policies to controls. It is not made clear how codes, or the rules and criteria within them, relate to zone objectives, how zone objectives relate to strategic directions, or how strategic directions relate to the Planning Strategy or other interfacing policy.

As discussed in Paper 5—System Operation, this is partly an issue of presentation; objectives are included in land use zones and the detailed development controls intended to support them sit in separate codes. It is also an issue of content, with general and precinct codes providing limited, if any, information on strategic intent. Precinct codes are the best example of this challenge. They provide additional standards for land uses and buildings in different areas of the Territory, but do not contain any explanation for why that additional guidance is justified nor what objectives they seek to achieve.

This challenge is symptomatic of a focus on compliance with rules over facilitation

of outcomes. Alignment between a development application and the intent of development controls (zone objectives, for example) is not, despite directions of the Act, a consideration within the development assessment process. Development applications are principally assessed on the extent to which they satisfy rules and criteria. This is further discussed in Paper 4—Development Assessment.

The limited line-of-sight makes it difficult to determine whether the existing development controls are ‘fit for purpose’ in respect to their ability to deliver on the strategic directions. Concerns have been raised in the past about the number of zones; however, this should not be an issue if the role and purpose of each zone is well articulated.

Limited controls to manage areas of change

Where this challenge becomes particularly pronounced is in the development controls available to facilitate change. One of the biggest challenges that the ACT planning system will face over the coming decade is accommodating continued population growth. The Planning Strategy identifies areas of Canberra that are appropriate for higher density housing, with the goal of accommodating 70 per cent of new residential development within the existing urban footprint. Such significant transformation of existing urban areas creates challenges in terms of interfaces with existing residents and impacts on infrastructure.

Transformation of existing urban areas is currently managed through a series of planning processes including master plans and detailed planning studies for areas such as the city and Gateway corridor. Re-zoning (from suburban residential zone to high-density residential zone, for example), at the request of landowners, is considered but is an approach that does not always enable effective coordination of development with infrastructure provision.

By contrast, development of future urban areas on Canberra’s fringes is supported by a hierarchy

of planning strategies that inform where different land uses will be located and the infrastructure required to support them. These strategies inform the assessment of preliminary development applications (estate development plans) and inform the preparation of precinct codes. This contrast is illustrated in Figure 6.

Development in existing urban areas is not guided by an equivalent hierarchy of strategies. The development of precinct codes is generally supported by a master plan or a framework planning process, but these form no official part of the Territory Plan. That means that once a precinct code has been adopted, the explanation of strategic context and desired outcomes for the area is lost.

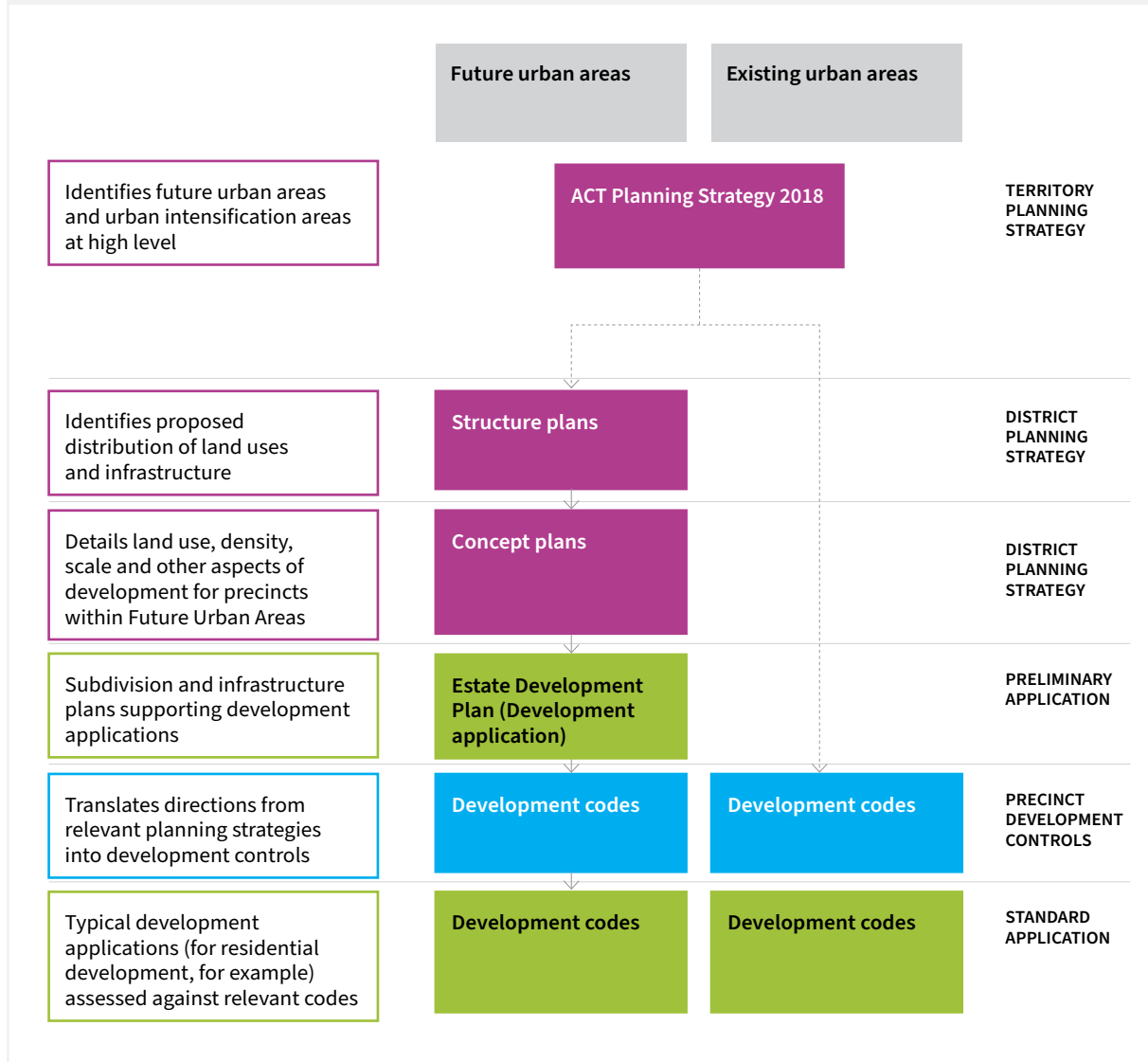
Static rules that do not easily accommodate innovation or change

Static and inflexible development controls also impact the planning system’s ability to accommodate and evolve with the increasingly rapid pace of technological disruption and change.

No set of development controls can reasonably anticipate every development scenario. When controls are restrictive, an otherwise good development may not meet one specific control due to mitigating circumstances and the development is to be rejected. Conversely, an undesirable development can satisfy the relevant development controls and be approved regardless. As the case study below highlights, this rigidity prevents even government commitments being approved at times.

Under the current system, approval of non-conforming applications, even those that are delivering a positive planning outcome, generally requires a Territory Plan amendment to change development controls where deemed relevant. This process can take one to two years, placing major cost imposts on development proponents and an administrative burden on the planning authority. Challenges like the one highlighted in the following case study are becoming increasingly frequent.

Figure 6: Planning for future urban areas and existing urban areas



Case study

The rigidity of the development controls within the Territory Plan can result in an inability to approve development applications that, on the surface, seem to be logical. A recent example is the refusal of an application for a new hydrogen refueling station. The application was entirely consistent with an ACT Government commitment and policy.

The site in question, within the TSZ2 Services Zone, was an existing major pump station providing liquefied natural gas storage and fueling services to government vehicles. Under the zone's development table, despite it being a service zone, a service station (for public use) is prohibited.

Existing development controls provide for the consideration of minor ancillary uses but do not accommodate consideration of prohibited uses even when they would deliver a positive planning outcome. For this hurdle to be overcome the development tables within the TSZ2 zone would need to be amended, a complicated and costly process which could take two years.

Codes that are out of date and may not support current policy

In addition to these higher order challenges, there are specific parts of current development controls that need updating:

- Several codes are out of date and may not support current government policy. For example, the Estate Development Code. The code provides guidance for the subdivision of land in greenfield areas and urban renewal, infill and intensification areas. The code needs to be updated to meet contemporary community and industry expectations, deliver on government priorities and provide best practice subdivisions.
- The format and content of codes is inconsistent. While most codes are structured around rules and criteria, several are not. Further, some contain objectives whereas others do not. This complicates interpretation by both the community and planning

professionals and results in some codes being largely ignored due to uncertainty about their role or status. The following case study on the Community and Recreation Facilities Location Guidelines General Code is an example of this.

Overall the purpose and intended outcomes of existing development controls require better explanation. This includes how they relate to the Planning Strategy or interface with other government policy.

Development controls also need to be considered within the context of the challenges the Territory faces in the years ahead. This means reviewing whether the controls remain relevant or fit for purpose in light of policy directions in relation urban intensification. This is likely to require greater flexibility than the existing compliance-focused controls allow—and the need to be dynamic to accommodate the evolution of precincts and districts as they change.





Case Study

The Community Recreational Facilities Location Guidelines General Code (CRFLG General Code) covers facilities used for community purposes and which need public access: health, education, community services, arts, sport and recreation.

The code is for use in making decisions about where to locate community and recreational facilities, whether new facilities or the re-use of existing ones. It documents sound planning practice for agencies providing facilities and include detailed guidelines, not rigid standards, that reflect the key location objectives.

The nature of the CRFLG General Code, in its current format, means it cannot, by itself, be determinative of anything. When altered from a guideline dated February 1998 into a general code, the provisions were unable to be readily adapted into the rules and criteria format. Thus, the code is rarely used in practice.

If the Territory Plan were to include provision for guidelines then the CRFLG would be a better fit, helping decision makers determine whether relevant proposals are fulfilling strategic directions and zone objectives rather than compliance with rules.

2.3 Community and industry feedback

What we've heard from planning stakeholders

The review of system performance has been complemented by ongoing community engagement. Over the past few years we have heard the views of stakeholders and members of the community on their experience in using or interacting with the planning system and their views on the types of development outcomes it is facilitating.

Three broad issues identified through the consultation process relate, to varying degrees, to development controls:

- The community is broadly supportive of the Planning Strategy but is sceptical about the practical implementation of its directions and its influence on development.

- The community is concerned that development outcomes facilitated by the current planning system are not well aligned with its values in terms of design quality and Canberra's character.

- The community feels that the complexity of the existing planning system compromises its ability to understand how decisions are made and what development outcomes can be expected in different areas of the city.

Implementation of strategic directions is discussed in detail in Paper 1—System Structure. However, as noted above, relatively simple changes to the way development controls are presented can help the community better understand the relationship between those directions and the development controls that are intended to deliver them.

Character and design quality are more complex issues, particularly as one person's interpretation

of what represents good design may not be the same as another person's. These topics are addressed through the Territory Plan; however, it may be that they are not addressed in sufficient detail that provides practical controls that promote good outcomes.

Desire for high-quality design that is in keeping with Canberra's 'bush' character is expressed through the Statement of Strategic Directions within the Territory Plan and some zone objectives. A desire for development in keeping with the 'desired character' of the local area is also expressed in some precinct codes. However, the controls do not currently provide a deeper explanation of what aspects of the Territory's character are valued and what this means for the desired character of new development. They do not explain how this character changes from district to district. They do not explain what sort of outcomes would constitute high-quality design.

The introduction of the Capital Design Review Panel (NCDRP) has been a positive step in improving the quality of design in the Territory. However, the panel only reviews a small portion of the applications that are submitted. It uses the Design Principles for the ACT as a guide in its consideration of proposals.

In order to achieve consistent good quality design across the Territory, as well as addressing issues relating to confidence and complexity, a coordinated approach is necessary. The implementation of the NCDRP as well as a collaborative approach to strategic planning (discussed in Paper 2 - Strategic Planning), assists in delivering this. Collaboration between community and government agencies increases confidence in the system's ability to respond to community values and aspirations, as well as achieving good design outcomes for our city.

2.4 System benchmarking

What we've learned from elsewhere in Australia and overseas

Paper 1—System Structure discusses how the traditional regulatory approach to planning has been evolving, with a trend toward more outcomes-focused development controls that are clearly aligned to strategic planning. Other jurisdictions are relying more heavily on objectives and discretion in order to encourage better development outcomes. The ACT's current regulatory and rules-based approach is the inverse of the outcomes-focused controls seen in these other jurisdictions.

Performance outcomes in place of rules

Under the current approach, codes are structured around the set of rules that a development application must meet. Additional criteria explain where and how discretion may be exercised in relation to those rules. Ongoing reforms in South Australia provide a useful comparison to this approach (see Figure 7).

Under the South Australian system, all development must meet the relevant performance outcomes. 'Deemed-to-satisfy' criteria describe one way that these performance outcomes can be satisfied but applicants are free to propose alternatives and have these considered on their merits. Additional deemed-to-satisfy criteria present one approved way of addressing those performance outcomes.

The development assessment pathway is influenced by the controls the proposal is assessed against (covered in Paper 4—Development Assessment); development applications that are notionally less complex and meet deemed-to-satisfy controls follow an expedited process. The proposed approach is extended to land use, where traditional development tables (identifying exempt, assessable and prohibited) are replaced by guidance in terms of the types of uses complementary to the desired outcomes for

Figure 7: Comparison between controls in the ACT and South Australian

ACT Planning System	
Rule R24) Maximum height of building is: a. in RZ3 – 9.5m b. in RZ4 – 12.5m c. in RZ5 – 21.5m	Criterion This is a mandatory requirement. There is no applicable criterion.
South Australian Planning System	
Performance Outcome Buildings of a low rise scale that compliment surrounding residential built form and local character	Deemed-to-satisfy Building height as follows: 2 storeys and up to a height of 9 metres

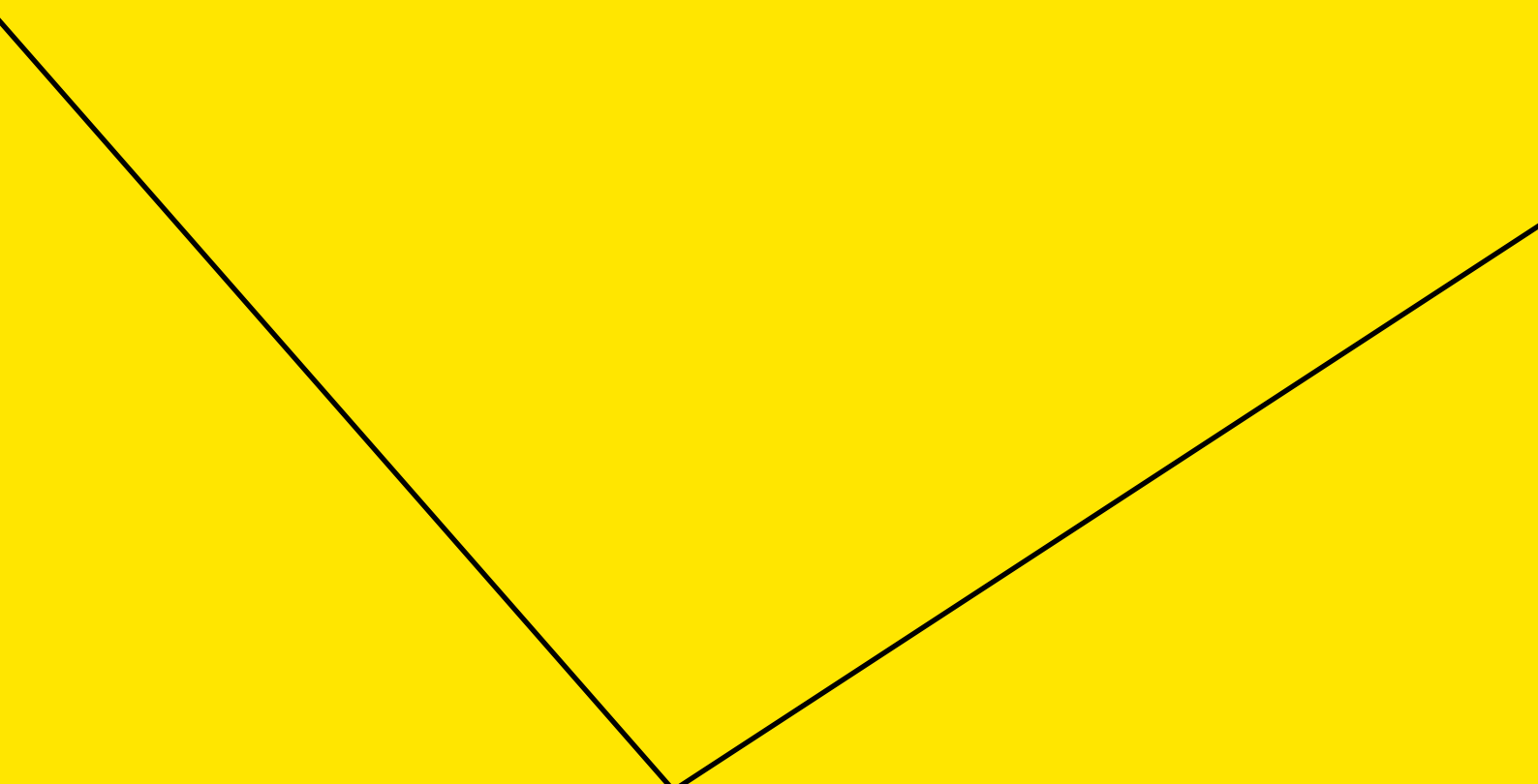
the zone or precinct. Under this approach the challenge presented in the hydrogen refuelling station case study would not have occurred as it could be demonstrated that the proposed use was complementary to the zone.

The deemed-to-satisfy approach theoretically provides applicants with scope to propose more innovative schemes and the planning authority with the discretion to support high-quality design outcomes. In South Australia and other jurisdictions, discretion does create the need for additional guidance (design guidelines being one example) that explain how that discretion will be exercised in determining what constitutes a good outcome that is consistent with outcomes-focused development controls. Such guidelines can help mitigate the risk that discretion creates too much uncertainty within the planning system. Guidelines are also discussed in Paper 5—System Operation.

Incentives for developers to go beyond minimum standards

Benchmark jurisdictions in North America offer the planning authority additional tools to promote better development outcomes. In Minneapolis, development controls allow the planning authority to offer increases in development density and height in response to proposals that provide significant community benefit or public amenity. The extent of dispensation is generally capped at an increase of 20 percent; the list of benefits or amenities that are required for eligibility are clearly defined within the development controls. By contrast, under the ACT's existing system there is very little to incentivise developers to pursue innovative ideas or outcomes.

3. Proposed directions for reform



3.1 Opportunity areas

Benchmark jurisdictions provide examples of alternative approaches to the structuring of development controls, many of which offer much stronger links between planning strategies and controls. The United Kingdom's adoption of performance-based spatial policies in place of traditional controls is the biggest departure from the ACT's current system. However, most other jurisdictions adopt a similar architecture but opt to promote development facilitation over regulation or control.

While the approach followed by the UK has benefits (primarily related to flexibility), they are unlikely to justify the scale of change that adopting such an approach would entail. Instead, and as demonstrated by other jurisdictions, significant reform and improvement can be achieved within the basic architecture of the Territory Plan. This would focus on ensuring development controls are meaningfully contextualised through clear links to policy directions and defining controls in a way that does not stifle innovation or disincentivise high-quality development.

Incentives schemes are considered to have potential but may be more appropriately considered at a later stage. They would mark a relatively significant departure from the existing approach, particularly with respect to Crown lease variations and the Lease Variation Charge (LVC), and therefore should be investigated further prior to introduction.

3.2 Proposed changes to development controls

Table 1 identifies the proposed directions for change within the context of development controls (DC).

Table 1: Proposed directions and changes to development controls

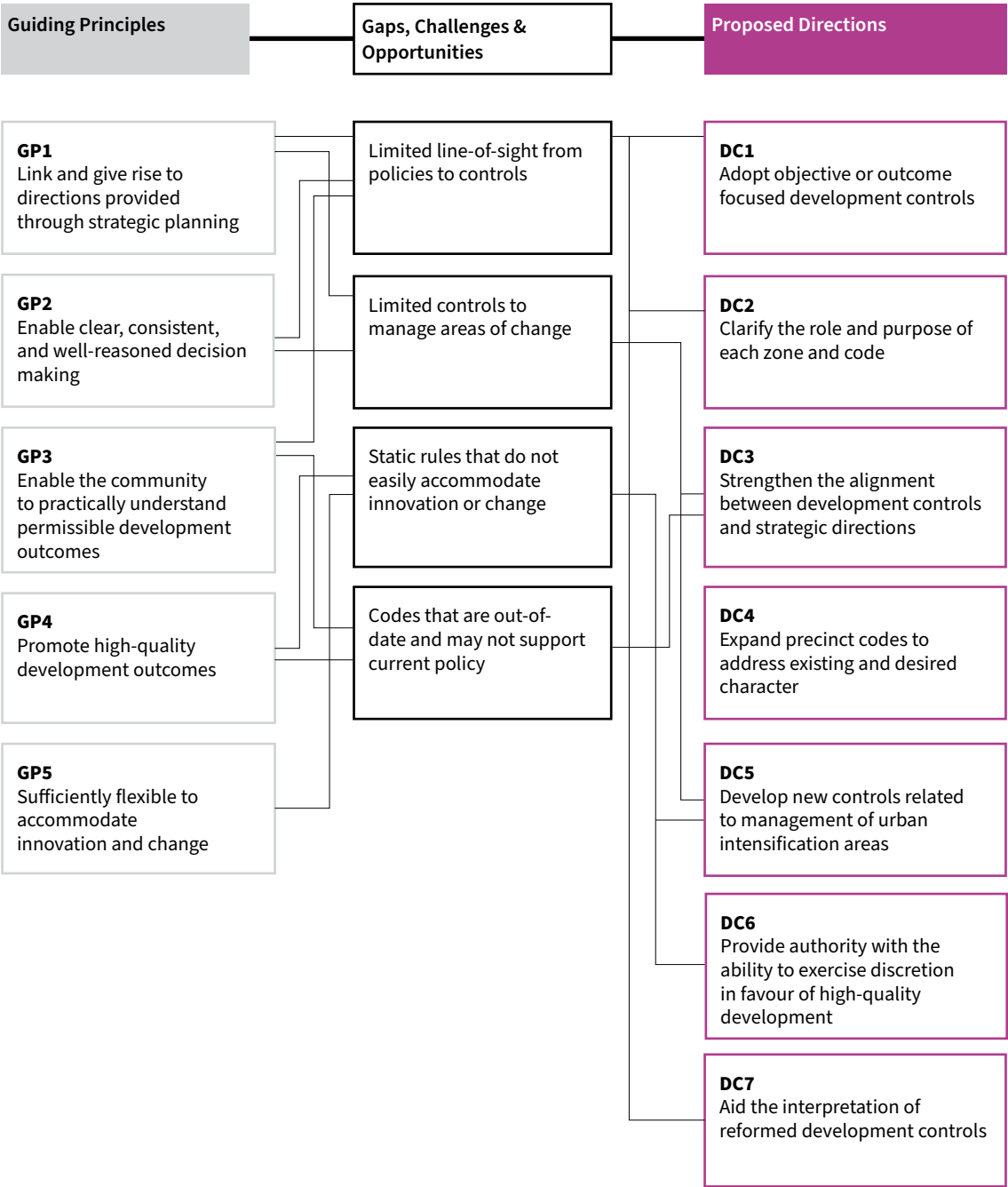
Development Controls Direction No.	Proposed Directions	Potential changes	Rationale
DC1	Adopt objective or outcomes-focused development controls	Translation of existing rules and criterion into performance outcomes and measures, similar to South Australia. Under the current system, Rule 3.18 in the Multi-unit Development Code states the maximum height of a building in Residential Zone 1 is 8.5 metres. Under the proposed changes this could be translated as an objective for new development to be ‘low rise and in keeping with the scale of surrounding development’. An associated measure could set a maximum height of 8.5 metres for code assessable development.	Existing development controls, in the eyes of the community, fail to promote high quality development. Expressing controls in terms of outcomes provides a stronger message in terms of the type and quality of development the planning system is seeking to facilitate and gives the planning authority greater scope to consider more innovative proposals.

Development Controls Direction No.	Proposed Directions	Potential changes	Rationale
DC2	Clarify the role and purpose of each zone and code	Include purpose statements into zones and codes which explain the outcomes they seek to facilitate and, in the case of zones, how and why it differs to other comparable zones.	Providing a stronger explanation of the role of each zone can improve clarity on why there is a need for 23 individual zones and how they collectively give rise to the strategic directions and objectives of the Planning Strategy. In undertaking this process it may also become clearer where rationalisation is possible and appropriate.
DC3	Strengthen the alignment between development controls and strategic directions	Linked to the above, include within the purpose statement an explanation of how each zone and code relates to and implements the Territory Plan's Statement of Strategic Direction.	Improving the line-of-sight between development controls and strategic directions facilitates a better understanding of why those controls have been adopted and what they seek to achieve.
DC4	Expand precinct codes to address existing and desired character	Introduce 'principles for development' or 'objectives' within the precinct codes that explain the defining features of the precinct, and what qualities should be reflected in new development.	Existing precinct codes fail to explain why different precincts or local areas require different development controls. Further, they fail to properly distinguish one local area from another. More detailed precinct codes can ensure the development is in keeping with the values and aspirations of the community. This information would embed outcomes of master or framework planning exercises that supported the original drafting of precinct codes.

Development Controls Direction No.	Proposed Directions	Potential changes	Rationale
DC5	Develop new controls related to the management of areas identified for change	Overlays and structure plans could be used to identify urban intensification areas or other areas for change. They can also enable the adoption of controls that can sensitively manage the transition of land use. As an example, structure plans could identify how re-zoning will be supported by or linked to infrastructure provision or how re-zoning may be most appropriately staged over the larger urban intensification area.	The Planning Strategy identifies sections of Canberra as being suitable for urban intensification, however there is no clear process for facilitating this or controls for mitigating the impact of the transition. Structure plans, like those used in future urban areas, could provide principles for the progressive re-zoning of land and put in place measures to minimise negative amenity or other impacts on existing communities.
DC6	Provide the planning authority with the ability to exercise discretion in favour of high-quality development outcomes	Introduce concepts to enable discretion to be exercised where it can support delivery of superior outcomes. To avoid creating uncertainty within the system, the grounds on and circumstances under which this discretion will be exercised should be clearly defined. As an example, building height could be increased where a significant public space is provided as part of a development, and if that additional height had no material impact on neighbouring properties.	The existing system disincentivises proponents to go beyond the minimum standards. In many cases pursuing outcomes contrary to the stated rules complicates approval processes and can result in refusal. Having a greater ability to exercise discretion and offer incentives to developers who propose outcomes in the community or public interest could encourage higher-quality development across the Territory.

Figure 8 summarises how the proposed directions address the current development control gaps and challenges and responds to the guiding principles (GP).

Figure 8: Reform summary for development controls





3.3 Potential effect of these changes

Predictability, consistency and certainty are valued aspects of the current planning system. Adoption of approaches that increase discretion could increase concerns around the subjectivity of interpretation of performance-based controls. Similarly, adopting the ability to offer incentives could raise concerns around overdevelopment.

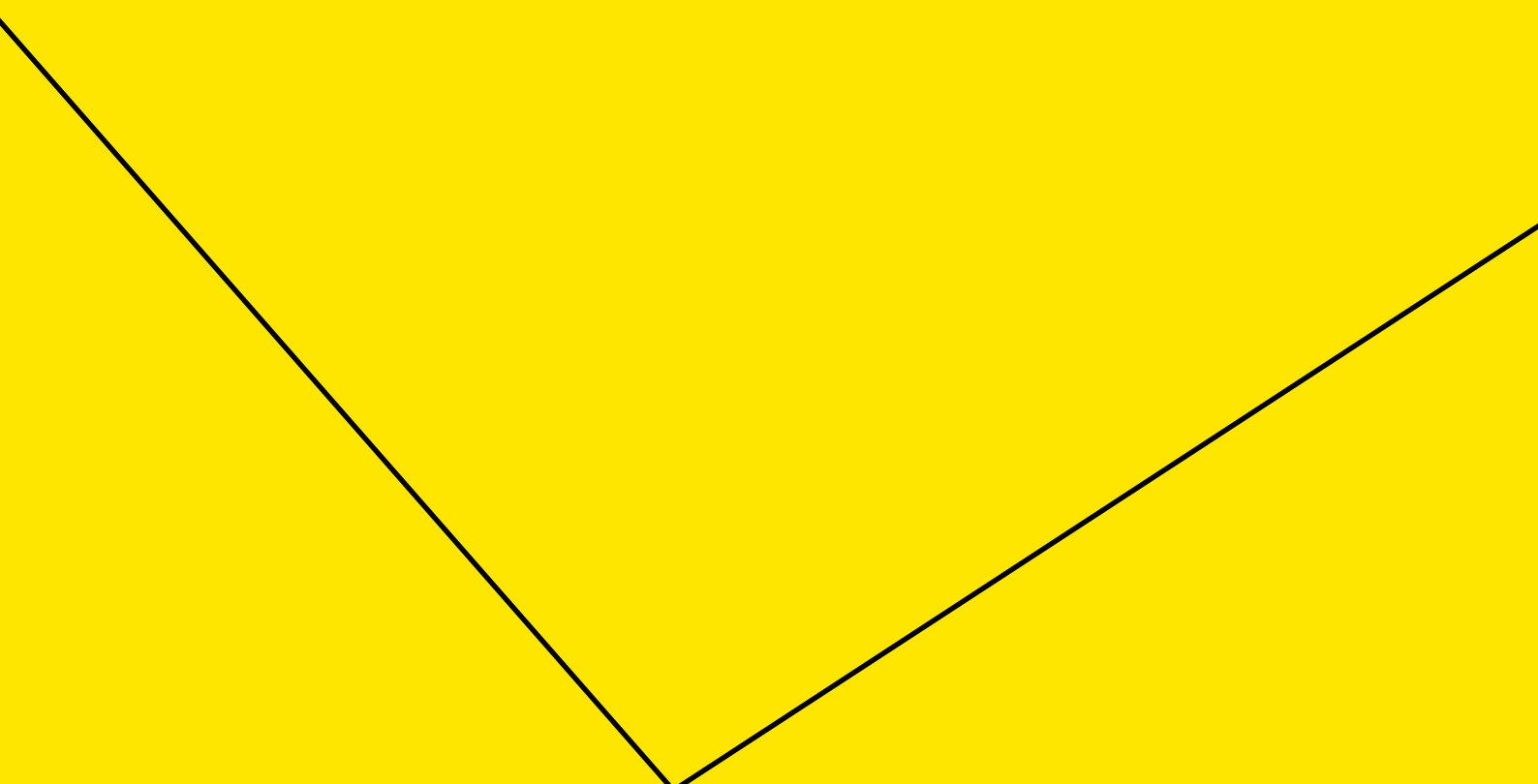
Such concerns can be mitigated through strong guidance and transparency of decision making. For example:

- producing guidelines to accompany development controls can explain and set boundaries to how performance outcomes will be interpreted

- only allowing incentives, such as increased height or density, where they have no material negative impact on surrounding properties.

Developing stronger controls in relation to character and design quality may raise concerns in industry about the potential for increased costs. Consequently, such controls should be defined in collaboration with industry and community so outcomes are aligned with the character and value of the local area without unreasonably burdening developers. The collaborative process and adoption of such controls can also align expectations between the community and industry, offering the opportunity to reduce conflict within the planning system and increase support for development.

4. Next steps



Adopting more contemporary and outcomes-focused development controls has been an aspiration for the ACT for several years and a central tenet of the reform project. Implementing the proposed directions for development controls needs to occur across two phases:

- First phase—align the strategic directions with the planning strategy and ensure the existing zones and codes and their objectives remain fit for purpose.
- Second phase—evolve existing rules and criteria into new outcomes-focused controls and draft new controls where necessary to implement the strategic directions.



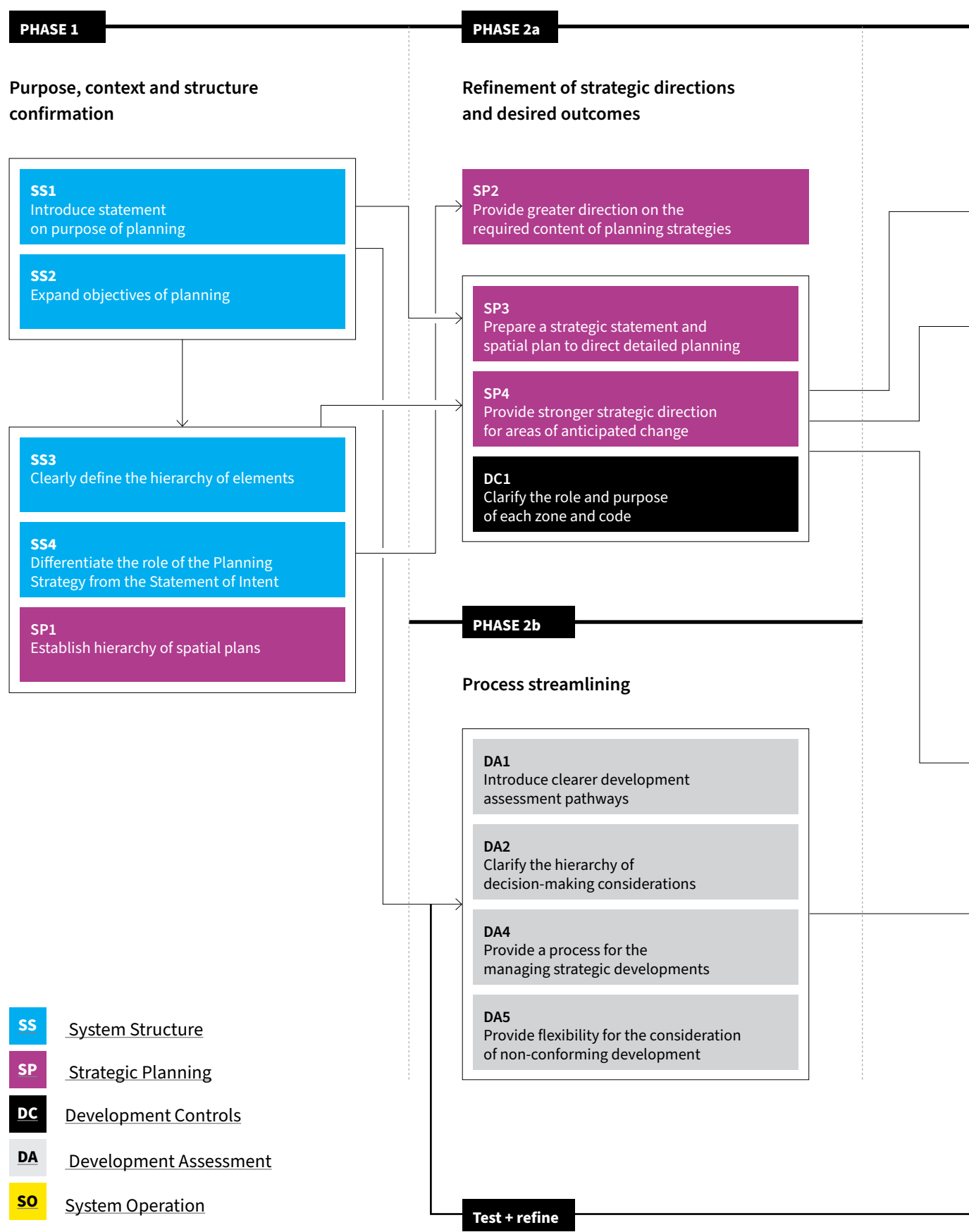
Figure 9 identifies the development pathway project and how the directions for the proposed development controls relate to the proposed directions identified in the other four focus areas. The pathway identifies that the reform of development controls cannot be undertaken in isolation.

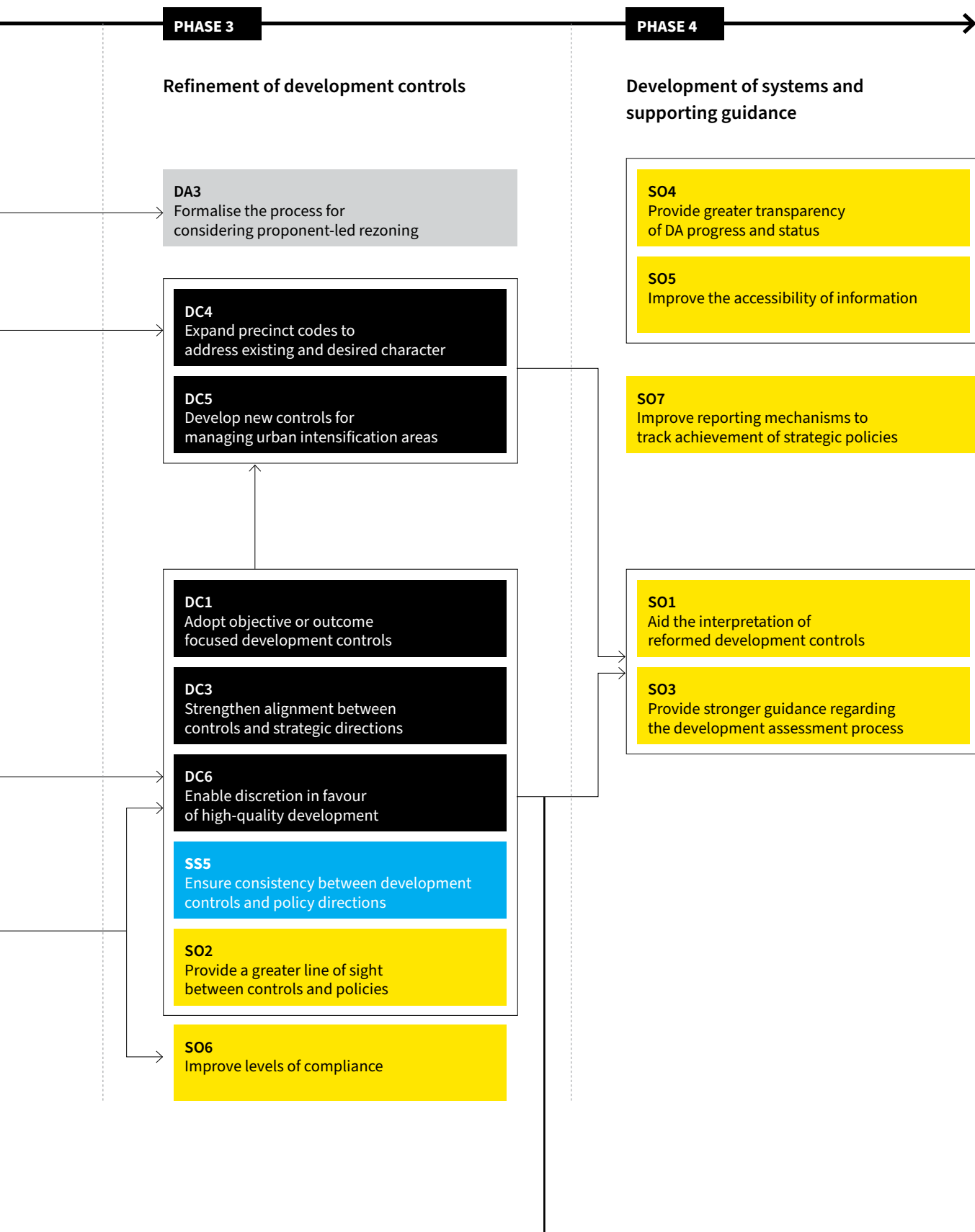
The first phase of developing and implementing the directions proposed is reliant upon confirming a revised purpose and objectives for planning as well as a revised hierarchy of plans. Within this context, the role and purpose of individual zones and codes can be tested and tailored toward policy directions such as urban intensification.

The second phase is reliant upon agreeing on the parameters for development applications and the processes through which they are considered. This relationship assumes that the types of applications that exist and the considerations on which they will be determined will influence the type, scope and structure of development controls. This second phase may also be iterative, with the details of development application and determination processes needing to be reviewed once a preferred concept and structure for development controls has been agreed.

Work has commenced on a range of technical task, and will continue through 2021. Outcomes of this technical work will be used to develop implementation proposals in 2021.

Figure 9: Project pathway for development controls





Glossary of terms

ACT planning and land authority: The Chief Planning Executive of the Environment, Planning and Sustainable Development Directorate is the ACT planning and land authority.

ACT Planning Strategy: The strategy produced by the Environment, Planning and Sustainable Development Directorate titled ACT Planning Strategy 2018¹.

ACT planning system: Legislation, policies, rules, plans and strategies that control and inform planning and development in the ACT.

Area planning: Planning at a district level to bridge the gap between ACT-wide and local area planning to provide an opportunity to build on existing and emerging government policies, plans and strategies.

Built environment: The structures and places in which we live, work and play, all of which are integral to improving the health, wellbeing and quality of life of our community as a whole.

Character: Character makes an area distinctive and contributes to the identity of the place.

Codes: A series of policies and instructions relating to planning. Three types of planning codes in the Territory Plan are: precinct, development and general codes.

Concept plan: A precinct code under the Territory Plan that guides the preparation and assessment of development in future urban areas.

Design principles: A set of design ideas that enable the consistent consideration of a range of design related issues including at a broader city, neighbourhood or site-specific scale.

Development application: The information package lodged with the planning and land authority to enable an assessment of a given proposed development to be conducted.

Development assessment: The processes through which development applications are assessed and considered. They are either approved, refused or required to resubmit with further detail.

Development code: A set of detailed rules and criteria which applies to a set of developments as outlined in the Territory Plan².

Development controls: Are documented in the Territory Plan² in the various codes and development tables. They are the policies that are used to control or manage development in line with planning objectives.

Exempt development: The development proposed is exempt from requiring development approval under a development table or by regulation.

General code: Planning provisions that address particular planning and design issues which may relate to any kind of development across any of the zones within the Territory Plan².

Greenfield: Greenfield areas are undeveloped land often located on the edge of existing urban areas and usually identified by a future urban area overlay in the Territory Plan.

1 https://www.planning.act.gov.au/__data/assets/pdf_file/0007/1285972/2018-ACT-Planning-Strategy.pdf

2 <https://www.legislation.act.gov.au/nj/2008-27>

Guidelines: Documents that provide guidance on how to implement official advice but do not include specific development controls.

Land use: The way in which a piece of land is used which includes the activities that are undertaken on it such as residential, industrial, community facility, recreational and commercial.

Leasehold: System of land ownership that applies to all land in the ACT, other than National land.

Living infrastructure: Refers to all the interconnected ecosystems within an urban catchment, including trees, gardens, green walls and roofs, parks, reserves, lakes, wetlands and open spaces.

Master plan: Non-statutory document that outlines a vision to guide growth and development of a centre over the next 20-30 years.

National Capital Plan: The metropolitan plan for Canberra and the Territory that requires 'Canberra and the Territory are planned and developed in accordance with their national significance'. It is prepared and administered by the [National Capital Authority](https://www.nca.gov.au)³.

Outcomes-focused planning: A system that focuses on the substantive matters to be addressed without specifying in detail how that will be achieved. It is one that is centred on the quality, results and performance of planning system outcomes, rather than rule compliance.

Overlays: Territory Plan overlays are a set of planning instructions that apply to areas which have special controls in place; e.g. Public Land Reserves, Future Urban Areas.

Planning: Also called urban or regional planning, is the process of making decisions to guide future action and is specifically concerned with shaping cities, towns and regions by managing development, infrastructure and services to improve social, economic and environmental outcomes.

Planning and Development Act 2007 (the Act): The legislation which provides the framework for the ACT planning system⁴.

Precinct code: A set of planning instructions which sets out the requirements that apply to individual suburbs or geographical areas (precincts).

Rules: A series of provisions which provide definitive controls for development. In relation to a code, means the rules set out in the code.

Spatial plan: A document which provides the direction for a specific area within the planning system and is used to inform the outcomes of development applications.

Spatially-led planning: Planning that places a greater emphasis on strategic spatial planning and physical direction of the Territory at different scales, from the city level to the local-area and site levels of planning, as well as improved planning and built form outcomes.

Stakeholder: Any person, institution, organisation, agency, department, authority, club, association or the like which is directly involved in the planning process.

Statement of Planning Intent: A statement prepared by the Minister for Planning which sets out the main principles that are to govern planning and land development in the ACT.⁵

3 <https://www.nca.gov.au>

4 <https://www.legislation.act.gov.au/a/2007-24/>

5 http://www.cmd.act.gov.au/__data/assets/pdf_file/0006/865482/Canberra-A-Statement-of-Ambition.pdf

Statement of Strategic Directions: A series of broad strategic principles to guide long term planning for the ACT in the [Territory Plan](#)².

Statutory planning: The part of the planning process that is concerned with the regulation and management of changes to land use and development which includes act of controlling land uses within an area covered by a land use plan.

Strategic planning: The long-term strategic or policy objectives that describe the purpose and direction of the planning system.

Structure plan: A document which sets out the principles and policies for development of future urban areas.

Territory Plan: The key statutory planning document in the ACT².

Urban Footprint: The geographic extent of the existing urban area.

Urban infill: Development of unused or underutilised land in existing urban areas. It involves increasing the capacity of our existing urban area to support growth.

Urban intensification areas: Targeted areas where development and redevelopment is directed and is aligned with supporting infrastructure and provides the opportunity for renewal and investment.

Urban renewal: The process of improving the economic, social and environmental sustainability of a particular urban area through redevelopment of underutilised urban areas.

Zones: Areas defined within the [Territory Plan](#)² which determine the appropriate land uses for an area.



