

**2022**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING BILL 2022**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004*, s 37)**

**Presented by  
Mick Gentleman MLA  
Minister for Planning and Land Management**

## PLANNING BILL 2022

This explanatory statement relates to the *Planning Bill 2022* (the Bill) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of the provisions in the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

The *Planning Bill 2022* is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

### BACKGROUND

Over the past three years, the Government has been reviewing the ACT planning system to improve and modernise the way the city's future is planned and to create a planning system which delivers for the people of the ACT.

It is not a 'light-touch' approach to reform nor a full-scale 'start from scratch' approach. It is a holistic review and proposed reform that will deliver a more 'spatially-led' and 'outcomes-focussed' planning system.

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

The reformed planning system has five key principles:

1 Easy to use

This principle refers to people's interaction with the planning system and the customer experience across all elements of it. It includes clear and user-friendly processes for applications, clearer linkages between different processes and, where able to provide, digital platforms that support the planning system being focussed on the user experience. Ease of use is

about having information that is easy to find about important matters, for example, how the planning system works, what an area is proposed to look like in the future (strategic planning) and what can be done on a parcel of land.

The principle does not mean a simplification of the planning process or trying to make planning a simple task. Planning is complex and involves the consideration and coordination of competing ideas and expectations, priorities and outcomes. Overall, the planning system should be able to be used by everyone, not just planning professionals and the Territory Planning Authority.

## 2 Certainty

This principle of certainty applies to both strategic and statutory processes within the planning system. The principle supports better information on the strategic planning work that is undertaken to provide a greater indication of the desired future for areas. This will benefit both the community and industry in understanding how areas are intended to look, change and be developed, guided by strategic planning to meet the evolving needs of Canberrans.

This also includes certainty of the considerations when deciding on an application and what statutory documents need to contain. The principle of certainty also applies to timeframes for the processes within the planning system. It also means certainty of rights and responsibilities. Certainty does not mean certainty of receiving an outcome or an approval. All proposals will be subject to assessment on their merits against the relevant planning processes and provisions that apply.

## 3 Flexibility

Flexibility means being less prescriptive, and more outcomes focussed within the reasonable parameters set by the planning system. Flexibility will be achieved through an outcomes-focus; however, flexibility will be limited where it could lead to unacceptable impacts. Flexibility doesn't mean 'anything goes', but refers to there being more than one way to achieve a desired outcome.

The planning system encourages innovative and flexible planning and design solutions, and outcomes focus through the wording of processes and provisions, noting that some may include a mandatory component to be met.

Certainty and flexibility are concepts that are not in conflict, as they refer to different aspects of the planning system.

#### 4 Transparency

Transparency is a necessary feature to build trust and confidence in the planning system. The Bill explores ways to make processes and decision-making more transparent and considers the use of the Territory Planning Authority website in a much greater capacity to provide easier access to information.

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

#### 5 Outcomes-focussed

An outcomes-focussed planning system means that the primary focus is on the achievement of good planning and development outcomes across the various processes of the planning system. An outcomes focus goes beyond the built form and considers the broader policy outcomes that can be achieved through the planning system, such as wellbeing, health, recreation, employment, housing and environment outcomes.

This means a system that focuses on the substantive matters to be addressed without prescribing in detail how that must be achieved. It is one that is centred on the quality, results, and performance of planning system outcomes, rather than rule compliance.

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 work, with desired planning outcomes set by strategic plans 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 consideration of built form, public spaces and interactions with surrounding blocks, amongst other planning considerations.

With the outcomes-focussed planning system, a hybrid approach is proposed for the new Territory Plan which will allow for many provisions to be written with an outcomes focus, but this doesn't preclude mandatory provisions, which will be included where it is considered necessary to limit impacts on neighbours and public spaces and control unsuitable development.

Planning is often a complex task, with the need to consider, balance and prioritise sometimes competing policy goals. To highlight the importance of good strategic planning, and the range of planning principles to be considered when undertaking strategic and spatial planning, the Bill proposes to include principles of good planning.

While the Bill sets the foundation for a reformed, outcomes-focused planning system, it still retains many existing provisions that are fit-for-purpose and remain effective.

The Bill will replace the existing *Planning and Development Act 2007* (the 2007 Act).

## **OVERVIEW OF THE BILL**

The Government launched the Planning System Review and Reform Project in March 2019 with the aim to:

- improve and modernise the way the Government plans for the city's future;
- support the city's growth while maintaining its valued character; and
- provide for a modern planning system that is accessible, easy to use and delivers improved development outcomes across the ACT.

In developing the Bill, a range of reform processes were examined in other jurisdictions across Australia and internationally where planning reforms in recent years have been undertaken.

The Bill is the foundation of a reformed planning system. It will be the main mechanism for delivering a simpler and easier to use system and focuses on improving development outcomes. It 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 the planning system.

The Bill sets up the planning framework for an ‘outcomes-focussed’ Territory Plan, which allows greater flexibility in the way developments are assessed, placing an emphasis on improving design quality and built outcomes so that developments can perform well within their local context.

The development of the Bill 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 an outcomes-focussed planning system.

### Chapter 1 – Preliminary

This chapter contains administrative provisions for the Act, including the naming of the Act as the Planning Act and providing for the commencement of the Act to occur on a date fixed by the Minister by written notice. This will allow an appropriate transition period between the ‘old’ planning system and the ‘reformed’ planning system.

### Chapter 2 – Object, Principles and Important Concepts

The broadened object clause in the Bill provides a new starting point for thinking about planning in the Territory and goes beyond the built form focus to make sure that the planning system delivers for the wide-ranging and often changing needs of all parts of the ACT community.

The Bill recognises the following concepts are important to achieve increased liveability, prosperity and wellbeing for Canberra’s residents:

- the ACT's biodiversity and landscape setting, including integration of natural, built, cultural and heritage elements;
- high-quality, people-focussed, and design-led built outcomes;
- the knowledge, culture and tradition of the traditional custodians of the land;
- planning for population growth and development while protecting those aspects that make the Territory an attractive place in which to live;
- a sustainable and resilient environment.

The principles of good planning have been established in the Bill as a helpful tool in directing policymakers and those administering the Act to the relevant frameworks and considerations when preparing strategic planning policies and exercising functions under the Act. This helps sets a benchmark for how planning will be undertaken under the reformed planning system created by the Bill. It also assists with communicating to the industry and the public about the purpose of planning and how good planning should occur.

The Bill introduces a new key concept: principles of good consultation. These principles are provided for in the Bill. These principles will assist and provide guidance to those required to undertake consultation in a manner that is consistent and transparent to the ACT community. The Minister may also make a guideline about the principles of good consultation and how these principles will be implemented.

Mandatory pre-DA consultation is being replaced by the principles of good consultation, with early engagement identified as a principle of best practice planning.

### Chapter 3 – Territory Planning Authority and Chief Planner

The authority under the Bill is the Territory Planning Authority, aligning itself with its primary function. The Bill also provides for the appointment of the Chief Planner as the statutory officeholder who performs the functions of the Territory Planning Authority.

The renaming of the Territory Planning Authority is proposed to delineate the role of the authority in the outcomes-focussed reformed planning system from

the planning and land authority's role in the existing system. This will provide a clear distinction for the Territory Planning Authority from its predecessor and recognises the expanded role of the authority in seeking better development outcomes and considering development applications from a performance perspective.

#### Chapter 4 – Strategic and Spatial Planning

The need for more consideration of planning outcomes at a district-scale has been identified, as the existing Planning Strategy only has a Territory and city-wide focus. Through district-level planning, areas of value can be identified and those areas where growth and change need to occur can be implemented more effectively at the district-scale and give effect to the object of the Bill.

The Bills' focus on strategic and spatial planning includes:

- placing a greater emphasis on strategic and spatial planning;
- providing a clear relationship between the Territory Plan and District Strategies;
- improving the line of sight from strategic planning processes to the Territory Plan; and
- better integrating other planning-related Government policies and strategies into the reformed planning system.

A District Strategy is a continuation of strategic and spatial planning (expressed through the Planning Strategy) at the district-level but looking at the same long-term timeframe. District Strategies will contain the long-term planning policy and goals for a district and must be consistent with the Planning Strategy.

There are nine districts currently identified under the District Strategies: Belconnen; Tuggeranong; Woden; Molonglo; Weston Creek; Inner South; Inner North and City; Gungahlin; and East Canberra.

District Strategies may identify areas within a district for future detailed planning, such as planning studies and investigations. This future planning will be done through a planning and response report with the outcomes fed back



into the District Strategy. The Bill retains the important concept of further plans to set further detail for an area, including future and existing urban areas.

### Chapter 5 – Territory Plan

The Bill requires a new Territory Plan to be established to give effect to the strategic and spatial planning outcomes within the reformed, outcomes-focussed planning system. Under the Bill an interim Territory Plan can be in place and operation while the Assembly Committee is deliberating on the draft Territory Plan.

The Bill establishes a legislative link between the Territory's Planning Strategies and the Territory Plan and provides a connection to other Government strategies, policies or plans that contain planning-related outcomes, which may be given effect via the Territory Plan.

Proponents may now also initiate amendments to the Territory Plan. This new process is to increase transparency in circumstances where a person other than the Territory Planning Authority suggests an amendment to the Territory Plan. The Bill sets out criteria the Territory Planning Authority must consider in determining whether to accept the application. This process allows the Territory Planning Authority at the outset to decline to consider those applications which are clearly contrary to Government policy or where the land in question is subject to ongoing detailed planning.

The Bill also provides an efficient and transparent process for amending the Territory Plan to give effect to planning outcomes contained in Government strategies, policies and plans. Consistent with the heightened importance of strategic planning in the reformed planning system, the Territory Plan is a living document that will be regularly updated to reflect and deliver current Government policy.

The Bill removes the strategic environmental assessment process. This process has not been used, except for the current review of the Territory Plan as part of the planning reform. The process is not considered to be an effective process for assessing potential environmental implications of planning policy changes, and that assessment of broad environmental

impacts is appropriately dealt with through various existing processes applying at different scales of the planning system, including:

- consideration of environmental and sustainability principles and outcomes through strategic and spatial planning processes, including recognition in the object of the Bill and principles of good planning;
- the environmental impact assessment process for development proposals;
- the strategic assessment process under Part 10 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Further, the removal of this process will be offset by increased consideration of environmental and sustainability outcomes in an outcomes-focussed planning system. Strategic and spatial planning will be informed by principles of good planning requiring consideration of natural environment and sustainability outcomes, ecological sustainability, and wellbeing and liveability.

#### Chapter 6 – Significant Development

The Bill introduces the concept of significant development. Significant development is a sub-category of assessable development. Significant developments are those developments which are subject to additional documentation, process and assessment requirements:

- environmental impact assessments;
- developments requiring design review; and
- subdivision design applications (previously known as estate development plans).

An environmental impact assessment is required wherever a development proposal may have significant adverse environmental impacts. Categories of development which require environmental impact assessment will be listed in the Planning (General) Regulations.

The two mechanisms under the Bill for the assessment of likely environmental impacts of a development are the environment significance opinions (ESO) and the environmental impact statements (EIS).

The Bill has removed the concept of an EIS exemption. The EIS exemption process is, in effect, an EIS based on existing studies. It is not a lesser environmental impact assessment process and has the same features of entity referral, public consultation and assessment by the Territory Planning Authority and Minister. The Bill omits the ability to apply for an exemption to the requirement to provide an EIS. Instead, the Bill retains the substance of this EIS exemption process by providing that recent studies may be relied on in the preparation of an EIS.

In this way, the Bill requires that expected environmental impacts be considered through a consistent process, always starting with the preparation of a scoping document by the Territory Planning Authority. This will deliver benefits through greater certainty to applicants as to the matters required to be addressed and also to interested community members, through a more transparent process.

The Design Review Process is recognised across Australia and internationally as an effective way to raise the design quality of the built environment. It offers the opportunity for peer review of development proposals by independent design professionals with the aim of achieving the best possible outcome for development proposals and public spaces. The threshold for significant developments requiring design review remains at a building with 5 or more storeys, or to increase the floorspace of a shop by more than 2,000m<sup>2</sup> (in particular zones).

A subdivision design application is relevant where a subdivision is proposed. A subdivision design application considers layout, street network, public realm and pedestrian networks, access to public transport and services as appropriate to support the eventual development on subdivided or consolidated blocks. The strategic planning for a district and other identified areas will influence the subdivision design application as a way to realise the broader strategic vision. The Bill also provides for further planning to apply in urban infill areas.

Development applications for significant development will be required to be publicly notified for an additional 10 working days, reflecting the greater

complexity and documentation provided with these applications. The Bill also provides that the Territory Planning Authority has an extra 10 working days for deciding applications for significant development. This reflects the additional documentation, and additional considerations, that must be taken into account when deciding an application for a significant development.

### Chapter 7 – Development Assessment and Approvals

The shift to an outcomes-focussed planning system requires the revision of development assessment processes to ensure the assessment process and decision-making criteria in the Bill appropriately allow for consideration of potential development outcomes and promote the achievement of good planning outcomes. The following policy changes have been made in order to increase the efficiency and effectiveness of the development assessment and approval system:

- efficient and transparent assessment pathway;
- endorsement notice for undertakings made in land sales processes;
- concurrent processes;
- entity referral and public notification;
- development assessment – pre-decision advice;
- decision-making considerations;
- timeframes;
- reconsideration;
- approvals – taking effect and ending; and
- transparency.

The Bill simplifies development assessment, with a single, efficient and transparent pathway. Significant developments, such as those that trigger an environmental impact statement or a referral to the National Capital Design Review Panel, must meet additional documentation and assessment requirements. The Bill delivers clearer assessment requirements and provides refined documentation requirements that reflect the relative complexity of a proposal.

The Bill adds a new requirement that the Deed Manager (i.e. the Suburban Land Agency) must provide an endorsement notice for certain development

proposals before a development application for the proposal can be lodged. This requirement applies where a Project Delivery Deed is entered into as a condition of the sale of land. This is to make sure that undertakings included in a tender for the purchase of a lease are delivered in the design of the proposed development.

Concurrent development applications in anticipation of Territory Plan variations involve a level of risk for the proponent (that the anticipated variation will not be approved). Nonetheless, this mechanism is considered to deliver efficiencies, so will be retained in the Bill. It is not considered appropriate, however, for a concurrent development application to be lodged prior to the proposed Territory Plan amendment being drafted by the Territory Planning Authority and given to the Minister for approval.

Until that occurs, there is insufficient certainty about the form a proposed Territory Plan amendment may take, in order for the concurrent development application to be assessed. The Bill therefore revises the time at which a concurrent development application may be made where a Territory Plan amendment is anticipated.

The Bill will retain the ability to lodge a development application for:

- prohibited development where an amendment to the Territory Plan has been drafted by the Territory Planning Authority and provided to the Minister for consideration; and
- prohibited encroachments onto land where the Territory consents to the encroachment.

Other concurrent processes, including for EISs, will be omitted from the Bill. This approach retains the concurrent processes where efficiencies are most likely to be achieved, and omits those concurrent processes that have been used since their introduction, but have proven not to be effective or efficient.

Concurrent consultation processes will also be omitted from the Bill. The provisions supporting concurrent consultation are lengthy and complex, and similar notification will be achieved through the public notification that applies

to each process separately, with updated administrative practices to make clear the two processes are connected.

The continued importance of entity referral and public notification is recognised in the Bill. Provision is made in both the regulations and the Territory Plan for when a development application is required to be referred to entities. The Territory Plan continues to prescribe the bulk entity referral requirements, tailored to the nature and impact of development applications.

The Planning (General) Regulation retains referral to the Conservator of Flora and Fauna where the application relates to any part of a declared site within the meaning of the *Tree Protection Act 2005* and, where an application relates to unleased or public land, to the custodian of the land. The Regulation also newly prescribes the Heritage Council where a development relates to a place registered or provisionally registered under the *Heritage Act 2004*, and where the Territory Planning Authority is aware that the proposed development may impact an Aboriginal object or Aboriginal place.

The Bill retains the requirement to refer proposed developments that are likely to have a significant adverse impact on a protected matter to the Conservator of Flora and Fauna. The Bill also provides discretion for the Territory Planning Authority to refer a development application to other areas of government whose advice may be relevant when the Territory Planning Authority is considering a development application. Such advice may be taken into account in deciding a development application but is not regarded as formal 'entity advice'.

In addition, where a development application is amended or further information is provided in support of the application, the existing re-notification provisions are retained and expanded to ensure that, where an application was not originally referred to an entity, but because of the amendment or further information the Territory Planning Authority considers that the entity may be able to provide relevant advice, the Territory Planning Authority may refer the application. This expanded referral power ensures that the Territory

Planning Authority can obtain all relevant information when deciding on development applications.

The effect of entity advice is also refined in the Bill. Where an entity provides advice to the Territory Planning Authority, but fails to do so in accordance within the required timeframe, the advice may be taken into account in deciding the development application. Where the advice is provided by a prescribed entity within the provided time, the Territory Planning Authority generally must not depart from that advice in deciding the development application.

However, an application may be approved contrary to entity advice (other than advice from the Conservator of Flora and Fauna in relation to a registered tree or declared site) where, having considered the land zoning, applicable desired outcomes under the Territory Plan, and where an EIS is required, any reasonable alternative design options, the decision-maker considers that departing from the entity advice is required in order to achieve a good planning outcome.

The Bill also makes limited provision for the Chief Planner, personally, to depart from Conservator advice on registered trees, declared sites and protected matters. In all cases, the Chief Planner must be satisfied that departing from the relevant advice would significantly improve the planning outcome to be delivered or result in significant public benefit.

In addition, where advice relates to a protected matter, that advice may only be departed from where the departure is consistent with the Offsets Policy (which provides for the offsetting of significant environmental impacts through the protection of areas where the same environmental values are found).

Public notification of development applications is a central feature of the ACT's planning framework. The Bill retains the requirement for public notification of a development application unless a regulation provides that one or both forms of notification is not required in a particular case.

Public notification takes the form of ‘major public notification’ and ‘notice to adjoining premises’ with specific provision included for giving notice by email where the Territory Planning Authority has an email address for a person. This change reflects the community’s increased use and reliance on email, and the fact that email is now a more efficient way of disseminating information than mail.

The Bill provides discretion to the Territory Planning Authority, when giving notice to adjoining premises, to give additional notice if the Territory Planning Authority considers the place may be affected by a development proposal in a way similar to an adjoining place.

The Bill also allows the Territory Planning Authority to make guidelines about additional notice to be given to nearby premises, for different development types. This power recognises the important role public notification, and representations, play in the development assessment process.

The Bill sets out a general rule that, where a development application is amended or further information is provided, further public notification is required. That further notification may be waived by the Territory Planning Authority if, having regard to the representations received in response to the initial notification, the nature of any proposed amendment and the cumulative impact of any proposed amendments, the Territory Planning Authority is satisfied that the proposed amendments (if any) will do no more than minimally increase the adverse and environmental impact of the development. This ensures there will be adequate consultation in relation to the substance of any development application.

The Bill introduces an important new stage into the development assessment process: pre-decision advice. This stage allows the Territory Planning Authority to provide advice to an applicant for development approval prior to making a formal decision in relation to the application.

The shift to an outcomes-focussed planning system means the Territory Planning Authority’s role is expanded; it must consider whether development proposals are achieving good planning outcomes. This new process has been



introduced to facilitate the Territory Planning Authority's expanded role. The Territory Planning Authority may provide advice on changes that, in the opinion of the Territory Planning Authority, are required to be made to a development application in order for it meet the requirements of the Territory Plan to achieve a good planning outcome.

Consistent with the goals of increasing transparency and accessibility of information, the Bill requires the Territory Planning Authority to publish on its website any pre-decision advice it gives. If formal pre-decision advice is given, an applicant for development approval may seek to address the Territory Planning Authority's advice (which may result in an amendment to the development application) or may indicate that they will not respond to the Territory Planning Authority's advice, in which case the Territory Planning Authority will proceed to make a decision on the development application. Any formal pre-decision advice must be taken into account by the Territory Planning Authority in deciding a development application.

In order to achieve an outcomes focus in development assessment, the Territory Planning Authority must be enabled to consider all relevant matters when deciding a development application. The Bill outlines matters the Territory Planning Authority must take into account, and when it must not issue approval.

New considerations facilitate the assessment of proposed developments' performance and merit, having regard to the scale, complexity and design of development proposals, and their context. The new considerations direct attention to the performance and suitability of a development proposal in the site and site surrounds, including its interaction with existing developments and as yet unconstructed development proposals.

The requirement for the Territory Planning Authority to consider other development proposals, even where they have not been approved or built, provides a mechanism for the Territory Planning Authority to consider the overall impact of proposals, their type, scale and interaction. This is particularly important to areas with significant infill proposed.

While the clarification of the hierarchy of decision-making criteria will predominantly be achieved through the new Territory Plan, the inclusion of these new decision-making criteria helps to make clear the matters a decision-maker considering a development application will take into account, and the bases upon which a development application may be refused. Additional decision-making criteria have been incorporated into the Bill to help describe several matters that are relevant to whether or not a proposal is achieving a good development outcome.

The fundamental requirement that a development proposal must be consistent with the Territory Plan remains a key feature of the development assessment process.

The Bill adopts a simple and certain approach to timeframes for development assessment processes. This approach replaces the current lengthy and detailed provisions for working out the time within which a development application must be decided.

The Bill adopts the model of a complete application: time for deciding an application runs from the day on which the Territory Planning Authority is provided with all required information for deciding the development application. If, on closer inspection, further information is required, the clock for deciding the development application stops on the day the Territory Planning Authority requests further information and starts again when the requested information is provided to the Territory Planning Authority. If an application is amended, it is considered a new application for the purposes of decision timeframes.

The approach taken to timeframes within the Bill provides an incentive for proponents to provide complete information to the Territory Planning Authority for assessment at the earliest possible time. This approach also allows any further public notification or entity referrals to occur within the statutory timeframe.

The Bill retains the availability of internal reconsideration where a development application is refused by the decision-maker. Minor amendments

have been made to provide for the appropriateness of the internal review process:

- the Territory Planning Authority must have a decision-maker more senior to the original decision-maker make the decision upon reconsideration; and
- reconsideration is not available where the Chief Planner made the original decision (reflecting that the Chief Planner is the most senior decision-maker).

The Bill provides for when development approvals take effect, and when they end. The provisions that set out when development approvals take effect are necessarily complicated, having regard to the various events that may need to happen before a development approval can take effect.

The Bill sets out a revised approach to the ending of development approvals. The existing provisions do not reflect the practical realities of other planning, construction and financing processes that travel alongside a development approval.

The Bill takes a less prescriptive approach, providing a single timeframe within which the development (subject of the approval) must be started and finished. This gives an overarching timespan, and a proponent can undertake development within this timespan having regard to their individual needs and constraints.

The applicable period will be five years, unless extended by the Territory Planning Authority. The Territory Planning Authority will have power to extend the five-year period for up to a further two years, in limited circumstances. Importantly, the development must have started and must be substantially progressed, and the development must remain approvable as at the date of extension. Separate provision is made for the ending of development approvals relating to lease variations.

The Bill establishes additional transparency measures. The shift to an outcomes-focussed planning system is accompanied by additional

transparency measures so it is clear what is being approved, and on what basis.

The Bill introduces several new requirements for advice, decisions and information to be published on the Territory Planning Authority website.

Examples of what must be published under the Bill include:

- development applications;
- requests for further information;
- further information provided;
- applications to amend a development application;
- notice extending period of public notification;
- decision to waive further entity referral or public notification requirements, with reasons;
- any pre-decision advice;
- notices of decision; and
- applications for reconsideration.

### Chapter 8 – Territory Priority Projects

While the Minister, generally, does not have day-to-day functions relating to the administration of the Territory Plan or assessing development applications, the Bill, in a few very specific areas, provides for the Minister to become involved in development and development application processes, particularly when they are significant for the Territory.

The Bill provides for a new power: the Territory Priority Project declaration power. This enables the Minister together with the Chief Minister to declare a proposal to be a Territory Priority Project. This will provide for certain significant projects to proceed through a new pathway. This power would only be available if at least one of the following criteria is met:

1. the proposal would achieve a major government policy outcome that is of significant benefit to the people of the ACT;

2. the proposal would substantially affect the achievement of the desired future planning outcomes set out in the Planning Strategy, a relevant District Strategy, the Territory Plan or any relevant zone; or
3. the proposal is for significant infrastructure or facilities, that are of significant benefit to the people of the ACT.

The Minister must publish a consultation notice setting out the Minister's proposal to declare a stated project, and must consider any representations made in response to the notice when deciding whether or not to declare a project as a Territory Priority Project.

The power is intended to apply to such projects of the scale and significance that have been the subject of specific legislation in recent years (e.g. light rail and the Symonston mental health facility) as well as to government projects that have been approved at development application stage by the Minister (e.g. the Canberra Hospital expansion, the ACT second electricity supply and the proposal for Kenny school), and major private proposals where they will deliver significant public benefit (e.g. critical public housing, private hospitals, schools etc). Proposals may be multi-stage or multi-site projects, but in all cases must be adequately described in the Minister's consultation notice.

Declarations are proposed to be notifiable instruments, providing transparency and giving the Legislative Assembly oversight of the use of the power while providing certainty to the progress and timeliness of projects.

Once declared, a development proposal must be decided by the Minister. A merits review would not be available and there would be limited time to seek judicial review. When deciding whether to approve or refuse a development application for the proposal, the Minister could depart from the Conservator's advice in relation to registered trees, declared sites and protected matters in limited circumstances. In no circumstances may advice from the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) be departed from.

## Chapter 9 – Offsets

The Australian and ACT governments have entered into bilateral agreements to deliver streamlined assessment for environment approvals and offsets to maintain high environmental standards and simplify approval processes under the EPBC Act. Offsets are usually land that is used to help manage the adverse impact of development on threatened species and habitats by providing compensation, often by setting aside additional land as a nature reserve (which then requires ongoing management).

## Chapter 10 – Leases and Licences

The leasing system plays two important roles in the Territory; firstly it is central to the system of title by registration, where proof of ownership is provided through registration of Crown leases (or other interests) and secondly, leases are used as a way of regulating the use of land, predominantly through lease purpose clauses. The removal of the leasehold system of land regulation was outside the scope of the planning system review and reform project however, the opportunity has nonetheless been taken to review several elements of the leasing system.

Modest legal policy changes have been made, while the bulk of policy positions underpinning leasing and licensing remain unchanged.

The Bill will also reshape how the concessional status of leases are to be removed. Where a development application relates to a proposal to remove the concessional status of a concessional lease, the development application is to 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 current Act, and the Minister will not be empowered to approve the removal of the concessional status without the Executive's approval.

Currently, the use of the land is regulated with a degree of inflexibility. There are circumstances where land needs to be used for purposes other than the purpose for which it is leased. Recent examples include the need for land to support the public health response to the COVID-19 health emergency and supporting the insurance assessment of thousands of cars following a

significant hailstorm affecting the ACT. The exemptions from requiring development approval presently authorise the Territory to carry out development, because of an emergency, to protect public health or safety, or property.

The Bill now also includes 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 the Territory Planning Authority is satisfied that giving the authorisation is necessary, considering the urgent nature of the proposed use of the land and whether other processes of the ACT are available to facilitate the proposed use in the circumstances.

#### Chapter 11 – Public Land

The public land aspect of the Bill was also outside the scope of the planning system review and reform project but the existing provisions are still fit for purpose in enabling appropriate oversight and reviews and have been retained in the Bill.

#### Chapter 12 – Development Offences and Controlled Activities

The compliance powers in the Bill have been simplified and expressed in a way that is easier to understand. The Bill omits the concept of applications for a controlled activity order. Presently, a person may apply to the Territory Planning Authority for a controlled activity order to be made where the person thinks another person is conducting a controlled activity. Unlike with the complaints process, the Territory Planning Authority has no discretion to dismiss the application on the basis it is frivolous or vexatious, and cannot consider whether, having regard to Access Canberra's risk-based regulatory model, compliance action is appropriate.

The Bill introduces discretion into the controlled activity order process. A person will be able to lodge a complaint in accordance with the existing complaints process. The Territory Planning Authority will then have discretion whether or not to consider making a controlled activity order.

The Territory Planning Authority currently evaluates complaints received and where responsibility lies with another entity, refers the complaint. To further support this process, a new example for complaints surrounding the impact on amenity due to litter has been included in the Bill. The *Litter Act 2004* purports to regulate amenity including on open private places and other legislation regulates overgrown vegetation, with the ACT Emergency Services Agency responsible for fire risk. Unclean leases under the Bill should be regulated within this context.

### Chapter 13 - Enforcement

Enforcement continues to provide for the appointment of inspectors and their powers of entry; the Territory Planning Authority's power to require information; seizure, forfeiture and return of seized items, search warrants and monitoring warrants; and rectification work orders and have been retained in the Bill to support compliance and enforcement action.

### Chapter 14 – Access to Information

To further the transparency principle guiding the processes of the Bill, a chapter has been created which consolidates all provisions relating to accessing information on the planning system. The main element of this chapter is the public register, which will be retained as an essential feature, with additional information and accessibility.

Exemption declaration documentation will be added to the public register as an increased transparency measure and the Bill will continue to require certain development application information and documents on the public register to be publicly available on the Territory Planning Authority website.

This will mean that plans submitted to the Territory Planning Authority, and the Territory Planning 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*.

### Chapter 15 – Notification and Review of Decisions



The Bill retains the fundamental approach to providing for review and identifying reviewable decisions and the persons who may seek review, but simplifies the statutory framework.

A key approach of the Bill is to identify categories of decision that are exempt from review in the primary legislation itself, rather than by regulation made under the Bill. The shift to specifying the exemptions from reviewable decisions in the Bill promotes transparency and certainty: having reviewable decisions and exemptions contained in two schedules which appear together in the Bill is easier to understand and a simpler approach.

The categories of reviewable decision that are exempt from review have also been simplified and realigned having regard to the new outcomes focus of the planning system. Developments in the city centre, a town centre, industrial zone or Kingston foreshore continue to be exempt. Developments in other non-residential zones will be exempt where a set of criteria are met.

Amongst those criteria are:

- the development must be at least 50m from a block within a residential zone; and
- if the development involves any construction of or alteration to a building or other structure on the land, any new or altered building or other structure on the land meets the performance outcome for any applicable height and plot ratio provisions by meeting the quantitative measure.

The effect of these criteria is that where fundamental development controls 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. This approach reflects that where key acceptable measures within the Territory Plan are met, the proposal is delivering an intended development outcome.

For those proposals that do not meet the key acceptable measures, approvals are more likely to be based on a qualitative assessment of the proposal's

compliance with performance outcomes, and review is available (except where the development is exempt under another item of the schedule; for example, where the development is within the city centre).

Schedule 7 of the Bill contains eight items and a significant simplification of the items from the 2007 Act, so 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 ACT Civil and Administrative Tribunal (ACAT).

Currently, the ACAT's review jurisdiction is limited where a decision to approve a development application has been made, and that decision is reviewable, the right of review is only in relation to the decision, or part of the decision, to the extent that:

- a) the development proposal is subject to a rule and does not comply with the rule;
- b) no rule applies to the development proposal.

This has caused significant uncertainty and resulted in several different approaches in the interpretation. There are numerous Tribunal decisions in which different approaches have been taken (see, for example, *Sladic v ACT Planning and Land Authority* [2018] ACAT 38 and *Noah's Ark Resource Centre Inc v ACT Planning and Land Authority* [2017] ACAT 44 and [2018] ACAT 95).

### Chapter 16 – Miscellaneous

This chapter contains provisions that are important to the effective functioning of the planning system: providing for the making of regulations, the setting of fees, and evidentiary provisions. No policy changes have been made however, some provisions have been relocated to new chapters, such as the Access to Information chapter.

### Chapter 20 – Transitional

Transitional provisions support the effective transition from the current system to the reformed planning system.

### Chapter 21 – Repeals

This chapter lists the legislation required to be repealed to enable the commencement of the *Planning Act 2022*.

With the Bill facilitating a shift to an outcomes-focussed planning system, the focus of decision-making is on the achievement of good planning outcomes, not compliance with quantitative and prescriptive rules.

### Displacement of subsection 47(6) of the Legislation Act 2001

Subsection 47(6) of the Legislation Act 2001 (Legislation Act) applies to section 48(4) – Contents of Territory Plan and section 96(3) – Rules for Design Review Panel of this Bill.

Section 48(4) of the Bill was drafted to allow for the incorporation of instruments that may be required from time to time to support the Territory Plan. Although no such instruments are currently incorporated, the disapplication of subsection 47(6) of the Legislation Act would allow for the incorporation of instruments that may be subject to another organisation’s copyright. Any instruments incorporated would be continually monitored by on the Environment, Planning and Sustainability Directorate (EPSDD) and any relevant amendments communicated to applicants and the broader community. The Territory Plan is developed by EPSDD and is available on the EPSDD website and the legislation register to ensure transparency.

Section 96(3) of the Bill was drafted to allow for the incorporation of instruments that may be required from time to time to guide the Design Review Panel’s functions. Instruments currently incorporated into the Panel’s terms of references include the CABA Design Review Best Practice Guidance, developed by the UK Design Council of Urban Design, the Urban Design Protocol for Australian Cities, and the Design Principles for the ACT. The disapplication of subsection 47(6) of the Legislation Act is necessary as

these instruments are regularly updated and it would not be appropriate to notify the instruments and all accompanying amendments on the ACT legislation register. The disapplication of subsection 47(6) of the Legislation Act also allows for the incorporation of instruments that may be subject to another organisation's copyright, although it is noted that no such instruments are currently incorporated. Any instruments incorporated will be continually monitored by EPSDD and any relevant amendments will be communicated to Panel members, applicants and the broader community. The Design Principles for the ACT are developed by EPSDD and are available on the EPSDD website. To ensure transparency, reference is made in the Panel's rules, which are published on the EPSDD's website, to any instrument that is incorporated under section 96(2).

### **CONSULTATION ON THE PROPOSED APPROACH**

In developing the Bill, the Government consulted with the public and stakeholders in a number of ways given the complex nature of the Bill. The engagement targeted the whole of the ACT, given planning affects each and every person living in the Territory. Engagement was held over a 3 month period (15 March 2022 to 15 June 2022).

A listening and consultation report have been prepared and are available on the EPSDD's website at [www.planning.act.gov.au](http://www.planning.act.gov.au).

Throughout 2021, the existing Environment and Planning Forum and the Stakeholder Working Series, consisting of industry and community representatives, were used to discuss early policy approaches to features and changes proposed in drafting a new Planning Bill.

A legislation working group, consisting of legal and planning practitioners, was also convened to discuss the drafting of provisions and policy approaches. The group met several times in the 2021/22 to provide feedback and advice to the Project team.

Online information sessions were held for key industry and community stakeholders and the general public to help inform consideration of the Bill

and in preparing submissions. Over 100 people took advantage of these sessions.

The main engagement was through the ACT Government's 'YourSay Conversations' portal, with links to more information on the detailed Planning Review and Reform including fact sheets that summarised the new legislation and an overview document (Planning Bill Policy Overview Paper).

The community were able to present their submission in three ways, to meet the different engagement preferences of the different audiences: online quick comments; online feedback form; and written submissions.

When engagement closed, over 300 submissions had been received from community councils, industry groups, representative organisations and individuals.

ACT Government Directorates were consulted throughout the development of the Bill.

## **CONSISTENCY WITH HUMAN RIGHTS**

During the development of the Bill due regard was given to its compatibility with human rights as set out in the Human Rights Act 2004 (the HR Act).

### ***Rights engaged***

The Bill engages the following sections of the HR Act:

- Section 9 - right to life (promoted)
- Section 12 - right to privacy and reputation (promoted)
- Section 17 - right to participate in public life (promoted)
- Section 8 – right to equality and non-discrimination (promoted)
- Section 27 - cultural rights of Aboriginal peoples and Torres Strait Islander peoples and other minorities (promoted)
- Section 21 - right to a fair trial (limited)
- Section 21 - right to be presumed innocent (limited)
- Section 12 - right to privacy and reputation (limited)
- Section 17 - right participate in public life (limited)

## ***Rights Promoted***

### Right to Life

In some circumstances, the right to life requires the ACT Government to safeguard life where there may be a real and immediate risk to life. The Bill acknowledges that without a regulated and principled approach to planning and development, there may be outcomes that pose a risk to life. For example, ensuring that necessary but potentially dangerous development such as electricity generating stations, electricity transmission lines, wastewater treatment plants and petroleum storage facilities deliver the necessary services to citizens, but are not located in such a way as to cause harm.

The establishment of a Territory Planning Authority under Section 16 with the functions set out in Section 18 enables the ACT Government to prepare and administer a Territory Plan, Planning Strategy and District Strategies, as well as to plan and regulate the development of land to avoid planning and development that pose a risk to life. This ability contributes to the government being able to safeguard life where there may be a real and immediate risk to life from unregulated development through, for example, electrocution, poisoning or explosion.

In some circumstances, the right to life also requires the ACT Government to take measures to address the general conditions of society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. One of the objects of the Bill set out in section 7 is to promote and facilitate ecologically sustainable development that is consistent with Planning Strategies and policies. The definition of ecologically sustainable development means that the planning and development decisions made under the Bill will consider a number of factors that contribute to a safe and healthy environment, for example the protection of ecological processes and natural systems at local, Territory and broader landscape level, and the maintenance and enhancement of cultural, physical and social wellbeing of people and communities. Developing the ACT with these principles of ecological

sustainability in mind will assist in the creation of living conditions that allow the right to life to be enjoyed with dignity.

Similarly, the Bill makes matters such as the ACT's biodiversity and landscape setting, planning for the challenges associated with population growth and evolution, as well as a sustainable and resilient environment that is planned, designed and developed for a net-zero greenhouse gas future using integrated mitigation and adaptation best practices and considers food and water security, important to the achieving the objects of the Bill. When the Bill is administered and interpreted with these considerations in mind, this will assist in the creation of living conditions that allow the right to life to be enjoyed with dignity.

The duty to protect the right to life also requires the ACT Government to take special measures of protection towards persons in vulnerable situations, such as children and future generations, whose lives may be placed at particular risk. Section 7 places ecologically sustainable development at the heart of the development process. This concept encourages development to protect the cultural, physical and social wellbeing of future generations through the integration of principles like the precautionary principle and inter-generational equity principle.

#### The Right to Privacy and Reputation

The right to privacy protects individuals from unlawful or arbitrary interference with privacy and home and encompasses the idea that individuals should have a separate area of autonomous space free from excessive government intervention and unsolicited intrusion by other individuals.

Section 7 encourages an outcomes-focused approach. It provides that development applications will be considered against the planning outcomes set out in the ACT's various plans and strategies. It seeks to reduce government intervention in prescribing how development should be undertaken on their properties as was the case with the *Planning and Development Act 2007*. Instead, it provides space for developers, and therefore home-owners, to meet planning outcomes in ways that they believe

best meet the particular conditions and circumstances in which development is to take place.

The outcomes-focused approach does not mean that no restrictions exist in seeking to meet planning outcomes. The Bill also prescribes mandatory requirements for development in Chapter 7 on development assessment and approvals, such as maximum height limit, site coverage or setbacks in residential zones, to ensure that one person's development does not adversely impact another person's enjoyment of their properties.

The Bill also supports the right to privacy and home by requiring that development applications be publicly notified under s 173, and more detailed notice provisions need to be given for development applications on adjoining land. This alerts people whose privacy and home may be impacted by prospective development to participate in the approval process.

#### Right to Participate in Public Life

The Bill promotes the right to participate in public life. The Bill facilitates a person's ability to take part in public life and planning decisions, directions and policy, including through consultation and comment on the draft Planning Strategy and District Strategies, draft Territory Plan amendments, development assessments, and Territory Priority Project declarations.

For example, division 5.2.3 requires that the Territory Planning Authority must invite people to comment on proposed major draft amendments to the Territory Plan, section 177 provides that anyone may make written representations about development applications that have been publicly notified and section 215 requires that the Territory Planning Authority must invite people to comment on proposed Territory Priority Project declarations.

Section 11 also promotes the right to participate in public life. It provides that the Minister may set ambitious standards for consultation being accessible, balanced inclusive, meaningful and timely. This is intended to ensure that the public are genuinely engaged in consultation processes and their feedback makes a material difference to government policy and decisions.



### Right to Equality and Non-Discrimination

The right to equality and non-discrimination ensures that everyone should enjoy their rights without discrimination of any kind. Discrimination refers to any treatment that, directly or indirectly, draws distinctions between persons based on prohibited grounds. The *Human Rights Act* includes disability as a protected status and requires that people be effectively protected from discrimination on this ground.

The Bill promotes the right to equality and non-discrimination. Section 11 sets out principles of good consultation. These emphasise that consultation should be accessible; accessible means information provided as part of the processes for consultation are easy to access and are presented in a variety of different ways to accommodate different stakeholders. The Bill requires public consultation in several instances described above, and section 11 is intended to facilitate inclusive community participation. Where this works to better include people with a disability in community consultation, this promotes their right to non-discrimination.

The Bill also promotes the right to equality and non-discrimination in section 10. These principles of good planning encourage proponents to design built forms and public spaces that are inclusive and accessible to people with differing needs and abilities, including through considering adopting universal design practices to guide their development activities.

### Cultural and Other Rights of Aboriginal and Torres Strait Islander Peoples and Other Minorities

Section 27(2) of the HR Act confers distinct cultural rights onto Aboriginal and Torres Strait Islander peoples and other minorities. The right entitles Aboriginal and Torres Strait Islander people to maintain, control, protect and develop their cultural heritage and distinctive spiritual practices, observances, beliefs and teachings. The importance of control by indigenous people over developments affecting them and their lands, territories and resources is a central theme to the UN Declaration of the Rights of Indigenous Peoples, the international covenant that underpins this right.

The Bill promotes the cultural and other rights of Aboriginal and Torres Strait Islander Peoples. Section 7 provides that the knowledge, culture and tradition of the traditional custodians of the land should be taken into consideration in making decisions under the Bill.

The Bill also recognises Aboriginal sites and objects protected under the *Heritage Act 2004*. The Regulations (for significant development applications) and the Territory Plan (for all other development applications) will require development applications relating to a place registered or provisionally registered under the *Heritage Act*, or development applications that the Territory Planning Authority is aware may impact an Aboriginal object or place, will be referred to the Heritage Council. In deciding development applications, section 183(h) requires the decision-maker to consider any advice given by an entity to which the application was referred. Section 171 also conditions a decision-maker departure from advice.

Aboriginal people and groups can challenge a decision in relation to a development application made under section 177 if they made a representation on the development application and they suffer material detriment.

Furthermore, amendments to the Territory Plan require consultation with the heritage council, which has Aboriginal representatives.

It is also proposed that the *Planning (Exempt Development) Regulation 2022* will provide an exemption for Aboriginal and Torres Strait Islander Peoples who are undertaking cultural practices to be exempt from requiring development approval.

### ***Rights Limited***

#### **Right to a Fair Trial**

##### *Nature of the right and the limitation*

The right to a fair trial is protected by section 21 of the *Human Rights Act* (HRA). Section 21 protects the right to procedural fairness, and can also

extend to protect third parties whose substantive legal rights may be affected by a determination, for example in planning decisions.

The Bill limits the right to a fair trial by placing some restrictions on review rights. For example, the ability to review Territory Priority Projects declared under section 215 is restricted by section 216, which limits a person starting a proceeding in court in relation to a decision to make a territory priority project declaration more than two months after the declaration was made.

Section 80 similarly limits the ability to challenge the validity of a Territory Plan provision. Challenges cannot be brought 3 months after the day the provision or amendment commenced. The validity of a provisions cannot be challenged only because the major plan amendment was inconsistent with the Planning Strategy or District Strategy.

In addition, the Bill also limits the right by setting out in Schedule 7 which development assessment matters are exempt from third party ACT Civil and Administrative Tribunal (ACAT) review. These provisions, particularly the exemptions for development in town centres and Territory Priority Projects, limit the right to procedural fairness in having disputes settled.

Under Schedule 6, third parties who may wish to review a decision to grant development approval under section 177 need to have made a previous representation about the application, which may exclude some third parties whose interests are nonetheless affected and limit their rights under section 21 of the *Human Rights Act 2004*.

#### *Legitimate purpose*

The objective sought to be achieved by these provisions is to facilitate projects that achieve wider policy and public benefit, especially for significant proposals that achieve a major government policy outcome, substantially effect the achievement of the desired future planning outcomes, those that significantly benefit the people of the ACT, or where residential property owners have an interest in developing their property subject only to necessary interferences. This will ensure that planning and development occurs in a way that supports and enhances the Territory's liveability and prosperity, and

promoting the well-being of residents, thus creating an effective, efficient, accessible and enabling planning system.

*Rational connection between the limitation and the purpose*

Restricting challenges to the validity of Territory Plan, and to the declaration of Territory Priority Projects in the ways described above ensures that these challenges are made promptly, and for some reason other than an inconsistency with the Planning Strategy or a District Strategy.

Exempting some developments from third party ACAT review in Schedule 7 allows certain activities which are not significant development, and which meet certain conditions such as being on land that is at least 50m from any block within a residential zone, under the legislation to proceed.

Requiring that third parties who may wish to challenge development applications to have made a previous representation limits review rights to those that have proactively engaged in the approval process, meaning fewer parties are able to seek ACAT review.

Reducing the number of potential reviews on these development decisions will maximise efficient decision-making in the context of low-risk developments and where the ACT Government seeks to undertake significant development that contributes to planning outcomes and provides benefits to the ACT, in a timely manner.

*Proportionality*

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose.

In the case of development assessment matters, Schedule 7 exempts from third party ACAT review matters considered low-risk development activities as discussed above.

In the case of limitations on the ability to review Territory Priority Project, the limitations are proportionate to the significant benefits the project provides to the ACT community, such as the benefits to public transport received under

the Light Rail project. They enable the benefits of such projects to be progressed in a timely manner.

Limiting the ability to review decisions made under section 177 is justified on the basis that parties who have engaged and made previous representations can apply for review, and division 7.5.4 includes extensive public notification requirements for development applications. This limitation on the right to a fair trial is also balanced against a property owners' interest in having their development applications decided promptly and subject only to necessary interferences. The latter has implications for the right to privacy and home.

### Right to the presumption of Innocence

#### *Nature of the right and the limitation*

The Bill limits the right to the presumption of innocence. The Bill introduces several strict liability offences that engage and limit the right to be presumed innocent as there is no requirement for the prosecution to prove a fault element, such as intention or recklessness and the prosecution need only show that the defendant did the prohibited act. These strict liability offences, and elements of offences include:

- undertaking development without approval under section 399;
- undertaking prohibited development under section 400;
- undertaking development other than in accordance with approval under section 402;
- contravening a controlled activity order under section 428;
- contravening a direction to undertake rectification work under section 434;
- contravening a prohibition order under section 449;
- not returning an identity card to the Territory Planning Authority under section 458; and
- not providing name and address to an inspector under section 469.

#### *Legitimate purpose*

The objective sought by these offences is to ensure that planning and development occurs in a way that supports and enhances the Territory's

liveability and prosperity, and promoting the well-being of residents, thus creating an effective, efficient, accessible and enabling planning system.

*Rational connection between the limitation and the purpose*

Including offences encourages adherence to the rules and parameters of the Bill, and ensures that those rules can be enforced, and breaches properly investigated.

The reason these offences are strict liability offences is to allow for straightforward prosecution in the case of people undertaking unregulated or prohibited development or obstructing inspectors from carrying out their duties. They are an effective means of enhancing the enforcement regime and deterring unauthorised behaviour.

*Proportionality*

The limitation on the right to be presumed innocent is justified in these instances. Firstly, the risk of inadvertent breach of sections 399, 400, 402, 428, 434 and 449 are low. Where the Bill makes it a strict liability offence to undertake development without approval (section 399), prohibited development (section 400) or development other than in accordance with approval (section 402), people who undertake development will have received advice from the Territory Planning Authority on acceptable and non-acceptable development and will be on notice by virtue of the development approval process, what behaviour is expected and prohibited. Similarly, offences against section 428, 434 and 449 are unlikely to be inadvertent as the content of the controlled activity, rectification work and prohibition orders explicitly state what conduct is required by the defendant.

Section 399 provides that it is a defence for people who undertake development without approval if they took reasonable steps to find out whether the development required approval or received an exemption and was not aware or could not reasonably be aware that the notice was incorrect. Section 400 provides a defence for people who undertook prohibited development if the development was authorised by approval before prohibition.

The Bill introduces safeguards in sections 399 and 400 in the case of a person who undertakes exempt development that subsequently stops being exempt because of an amendment to the legislation.

An inherent safeguard against the limitation on the right to the presumption of innocence is the availability of the defence of mistake of fact. This would allow anyone charged with an offence under sections 399, 400, 402, 428, 434 or 449 to challenge the offence. The defence of mistake of fact would also be a safeguard for third parties who may be lawfully on the property and inadvertently breach offence provisions because they are not aware of the prohibited behaviours and activities.

The strict liability provisions contained in section 399, 400, 402, 428, 434 and 449 have a maximum penalty amount of 60 penalty units (PUs). These maximum amounts are slightly higher than the recommended amount set out in the Guide to Framing Offences (50 PU's). These offences are set slightly steeper than the maximum penalties because these offences are intended to cover relatively serious regulatory offending for the purposes of financial gain.

The Bill also sets out a delayed implementation. During this time an extensive public education program will be implemented that will alert the community and industry about the new laws.

### Right to Privacy and Reputation

#### *Nature of the right and the limitation*

The Bill may limit the right to privacy and reputation. The Bill will impact on private life by providing inspectors with powers of entry to premises under section 459, general powers on entry to premises under section 464, giving directions about how rectification work is to be undertaken under section 465, requiring help on entry under warrant under section 466, taking samples on entry under warrant under section 467, seizing things on entry under search warrant under section 468 and requiring names and addresses under section 469. The Bill also authorises inspectors to the use of force to gain entry to a property under sections 444, 445, 483, 486 and 487. The use of force is limited to property only.

To the extent that the Bill restricts what would otherwise be a home-owner or resident's unencumbered ability to deal with their property and home entirely as they choose, the Bill creates several limitations on the right to privacy and home. These include requiring people to apply under section 164 for development approval to undertake work on their properties; to comply with controlled activity orders under section 420 which may direct the person to whom it is directed to undertake activities set out in section 425, such as not beginning or carrying out development without development approval; and to comply with rectification directions, work orders and prohibition notices under sections 433, 439 and 448.

The Bill provides for the cancellation of leases, including residential lease, as a consequence of breach of chapter 12 (development offences and controlled activities). Although this may engage and limit the right to privacy and home, this is intended only to operate as a matter of last resort for the most egregious of breaches, and reflects that in the ACT, residential leases are contracts with the government, and there need to be consequences for serious breach of that contract.

#### *Legitimate purpose*

The objective sought to be achieved is to ensure that unauthorised or prohibited development is not undertaken in the ACT and for the adverse impacts of unauthorised development activities to be rectified, including where that would unduly interfere with other people's interest in peacefully enjoying their homes. The objective is also to enable inspectors to be able to conduct their duties under the Bill. This will ensure that planning and development occurs in a way that supports and enhances the Territory's liveability and prosperity, and promoting the well-being of residents, thus creating an effective, efficient, accessible and enabling planning system.

#### *Rational connection between the limitation and the purpose*

The Bill achieves this purpose by providing inspectors with powers of entry to premises, to give directions about how rectification work is to be carried out, require help on entry, take samples, seize things under warrant and require



names and addresses so that they can effectively perform their duties in ensuring that development is being undertaken in accordance with the Act.

Requiring people to apply for development approval to undertake work on their properties comply with controlled activity orders and to comply with rectification directions and prohibition orders ensures that development activity adheres to the ACT Government's plans and strategies for a liveable Territory. This objective could not be achieved and the broader planning system undermined if the ACT Government could not assess applications against the outcomes promoted by these plans and strategies and address non-compliance and activities that undermined the achievement of these outcomes through controlled activity and rectification or prohibition orders.

### *Proportionality*

The limitations on the right to privacy and reputation are considered proportionate to the legitimate purpose.

In the case of the need to provide inspectors with powers of entry to premises for the purposes of inspection or to directions about how rectification work is to be carried out, require help, take samples or seize things under warrant, and require names and addresses, the Bill includes safeguards that they can only do so with the occupier's consent obtained in accordance with the provisions of the Bill or with a warrant. In the case of a warrant, it may only be issued through the courts and a judicial process, which has inherent safeguards. The power to grant a warrant depends on a magistrate being satisfied there are reasonable grounds for suspecting that there is a particular thing or activity connected with an offence under the legislation and that this is engaged in at the premises, or may be engaged in at the premises. Furthermore, inspectors must announce themselves before entering pursuant to a warrant, and details of the warrant and details about rights and obligations must be given to the occupier or someone representing them.

In instances where consent to enter is sought, there are further protections guiding how this consent must be sought. For example, the inspector must produce an identity card and explain important details such as the purpose of

entry, the resulting powers to seize evidence and that consent may be refused. Another protection is that consent, if given, must be recorded and can be challenged later in court. The actions the inspector can undertake when on a premises is limited to those actions set out in the Bill. Consent can also be withheld, meaning a warrant would need to be sought.

While the Bill also enables authorised officers to seize things, the Bill includes safeguards that limit the exercise of this power. These include, that inspectors can only seize things that are consistent with the purpose of entry told to the occupier, when seeking their consent or authorised under the warrant. The power to seize is confined to seizing things consistently with the purpose of the entry told to the occupier when seeking their consent. A receipt relating to things seized under the legislation must also be given. Furthermore, when inspectors give directions for a person to provide personal details, they are limited to the details and circumstances set out in the Bill.

In the case of the Bill enabling inspectors to use reasonable force to gain entry to a premises, this is limited to force against property, not a person. This has been included to facilitate an inspector to exercise their enforcement powers. It is proportionate in that the power is limited to the reasonable use of force on property only and additional safeguards are included to ensure that any interference with human rights is not unlawful or arbitrary. These include: entry to premises must be authorised under warrant which must specify reasonable force may be used (discussed above); a warning is given that hindering an inspector is an offence; only a police officer may use force against a person; any personal property that is seized must be returned or reasonably compensated; during enforcement action damage must be minimised and reasonable compensation is payable for loss arising from exercise of enforcement powers.

In the case of requiring people to apply for development approval to undertake work on their properties the approval is only required for non-exempt development. Any authorised use of land, or of a building or other structure on land, is exempt from requiring development approval. Both the process for obtaining, and the grounds for refusing a development application

are prescribed with a high degree of clarity and detail. A person may apply to a works assessor or building surveyor for an assessment of whether a development is an exempt development. Applicants for development approval can apply for a reconsideration under the Bill and/or have the decision considered by ACAT where a decision for development is refused.

In the case of requiring a person to comply with controlled activity orders which may direct the person to whom it is directed to undertake certain activities the Territory Planning Authority must first provide the person with a show cause notice of the Authority's intention to make the order. It is also limited to the activity on the notice and detail whether the activity is the subject of a complaint. There is a further safeguard in that the person given the notice may provide the Authority with reasons explaining why the order should not be made and the Authority must consider these reasons before deciding to make a controlled activity order. The controlled activity orders can only relate to the activities set out in the Bill. The limitations effected by the order are not indefinite as the order ends on a day in accordance with the order, or when it is revoked. A person bound by the order may apply to have it revoked, and a decision to refuse this is reviewable. Finally, the person who is the subject of a controlled activity order can apply to ACAT for review of the decision to make the order.

In the case of requiring a person to comply with rectification directions and prohibition notices the direction/notice is limited to the activity set out in the order. A magistrate can only make a rectification direction for the purposes set out in the Bill. Similarly, the Territory Planning Authority can only make a prohibition notice for the purposes set out in the Bill. While the Territory Planning Authority may authorise a person to enter a premises to which a direction to undertake rectification applies, the authorised person must not enter the premises for the first time unless accompanied by an inspector or will have to leave if the occupier withdraws consent to the person being on the premises.

The person who is the subject of a rectification direction can apply to ACAT for review of the decision to make the direction. The person to whom a

prohibition notice is directed to, apply to the Territory Planning Authority for the revocation of the notice.

Finally, the limitation on privacy is achieved using the least restrictive means possible, in part because these entry powers do not extend to a part of the premises that is used only for residential purposes.

### Right to Participate in Public Life

#### *Nature of the right and the limitation*

The Bill may limit the right to participate in public life. Section 95 limits the selection requirements of people who may participate on the Design Review Panel as its participation requires participants to have particular expertise to advise on technical matters raised in the Bill. The panel must include the government architect, a representative of the National Capital Authority or one or more members contracted by the Territory Planning Authority to provide design review services to the panel.

#### *Legitimate purpose*

The purpose of using participation requirements is to enable the decision maker to receive expert advice from the panel participants on matters raised in proposals on which decision-makers need to make an informed decision. This will ensure that planning and development occurs in a way that supports and enhances the Territory's liveability and prosperity, and promoting the well-being of residents, thus creating an effective, efficient, accessible and enabling planning system.

#### *Rational connection between the limitation and the purpose*

The means proposed to achieve this purpose is to require that participants possess one or more of a broad range of relevant expertise and experience set out in Section 95. The inclusion of a participation requirement based on expertise and experience seeks to ensure that the most appropriate decisions are made under the Bill.

#### *Proportionality*

Section 95 allows a person to provide design review panel services if they have appropriate expertise in architecture, urban design, urban planning, landscape architecture, engineering or another area relevant to the urban environment. The Bill therefore enables a broader range of people and their expertise to be considered under the legislation.

## **Planning Bill 2022**

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Planning Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Chapter 1 Preliminary

Chapter 1 contains administrative provisions for this Act, including the naming of this Act as the Planning Act and providing for the commencement of this Act to occur on a date fixed by the Minister by written notice. This will allow an appropriate transition period between the 'old' planning system and the 'reformed' planning system.

#### Clause 1 Name of Act

This clause names this Act as the *Planning Act 2022*.

#### Clause 2 Commencement

This clause provides for the commencement of this Act. Section 38 and Part 20.3 will commence on the day after this Act's notification day. The remaining provisions of this Act commence on a day to be fixed by the Minister by written notice.

#### Clause 3 Dictionary

This clause provides for the dictionary to be located at the end of this Act.

#### Clause 4 Notes

This clause explains that notes are for explanatory purposes only and do not form part of this Act.

#### Clause 5 Offences against Act—application of Criminal Code etc

This clause explains that other legislation applies in relation to offences against this Act.

#### Clause 6 Application of Act

This clause explains that this Act only applies to Territory land.

### Chapter 2 Object, principles and important concepts

Chapter 2 outlines the object of this Act, the 'principles of good planning' and the 'principles of good consultation' to demonstrate how good planning and consultation should occur and establishes key concepts and definitions to highlight the importance of these in this Act.

The new object of this Act considers the broader purpose of the reformed planning system and its integration with other ACT Government policies and strategies and how the planning system can support and enhance the lives of people living in the Territory.

## **Part 2.1 Object and key elements**

### **Clause 7 Object of Act**

This clause sets out the object of this Act to support and enhance the Territory's liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system.

The object considers the broader purpose of the reformed planning system and its integration with other ACT Government policies and strategies, and how the planning system can support and enhance the lives of people living in the Territory.

### **Clause 8 Key elements of Act**

This clause explains the planning regime for the ACT is to be consistent with the responsibilities of the Territory under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth). It also lists the key elements of the planning system delivered through this Act.

### **Clause 9 Meaning of ecologically sustainable development**

This clause defines the term 'ecologically sustainable development' to provide a consistent meaning in this Act.

The terms 'achievement of economic growth and prosperity', 'maintenance and enhancement of cultural, physical and social wellbeing of people and communities', 'protection of ecological processes and natural systems', 'the inter-generational equity principle', and 'the precautionary principle' are defined to provide a consistent meaning in this section.

## **Part 2.2 Planning Principles**

### **Clause 10 Principles of good planning**

This clause lists the principles of good planning. The principles of good planning direct policymakers and those administering this Act to the relevant frameworks and considerations when preparing strategic planning policies and exercising functions under this Act. This helps set a benchmark for how planning will be undertaken under the reformed planning system created by this Act. It also assists with communicating to industry and the public about the purpose of planning and how good planning should occur.

### **Clause 11 Principles of good consultation**

This clause lists the principles of good consultation that must be considered when undertaking consultation under this Act. Effective engagement with the community will assist with building trust and confidence in the planning system.



## **Clause 12 Good consultation guidelines**

This clause requires the Minister to make guidelines about the principles of good consultation and any person carrying out consultation under this Act must take the guidelines into consideration.

It is expected the Minister would make guidelines on how the principles of good consultation should be implemented and provide further detail on best practice consultation approaches and take into account whether the principles continue to reflect best practice.

## **Clause 13 Consultation in accordance with Act taken to meet principles of good consultation**

This clause explains an amendment of the Territory Plan or a development application have meet the principles of good consultation, if undertaken in accordance with the consultation requirements applying to the amendment or application under this Act.

## **Part 2.3 Important concepts**

### **Clause 14 Meaning of development and exempt development**

This clause defines the term 'development' and 'exempt development' to provide a consistent meaning in this Act.

The terms 'consolidation', and 'subdivision' are defined to provide a consistent meaning in this section.

The terms 'development, in relation to land' and 'exempt development' underpin the fundamental requirement of this Act. The types of development that require approval safeguard the integrity of the planning system in the ACT.

### **Clause 15 Meaning of Use**

This clause defines the term 'use' of land, or of a building or other structure on land to provide a consistent meaning in this Act.

## **Chapter 3 Territory planning authority and chief planner**

Chapter 3 sets out the functions, roles and responsibilities of the Territory Planning Authority and Chief Planner. With the move to an outcomes-focussed planning system, it is considered necessary and appropriate to create a new entity, the Territory Planning Authority, to signify this change and differentiate the new system from the old system.

The Authority's functions have expanded to not just decide applications for development approvals, but to promote the strategic planning of the Territory, high-quality design and good planning outcomes.

## **Part 3.1 Territory planning authority**

### **Clause 16 Establishment of Authority**

This clause establishes the Territory Planning Authority as a corporation and the Chief Planner as the Territory Planning Authority.

### **Clause 17 Authority represents the Territory**

This clause binds the Territory by anything done by the Territory Planning Authority or the Chief Planner in exercising a function of the authority.

## **Part 3.2 Functions of territory planning authority**

### **Clause 18 Authority functions**

This clause lists the functions of the Territory Planning Authority which promotes the strategic planning of the Territory, high-quality design and good planning outcomes for the ACT. The Authority may exercise any other functions given under this Act, another Territory law or Commonwealth law. The Authority must exercise its functions, if relevant, in accordance with the object of this Act; and taking into account the principles of good planning and the statement of planning priorities made by the Minister.

### **Clause 19 Authority to comply with directions**

This clause requires the Territory Planning Authority to comply with any directions given to it under this Act or another Territory law.

## **Part 3.3 Operations of territory planning authority**

### **Clause 20 Ministerial directions to authority**

This clause provides the Minister with the ability to give a direction to the Territory Planning Authority about general policies the Authority must follow and to prepare an amendment to the Territory Plan.

### **Clause 21 Assembly may recommend directions to authority**

This clause provides the Legislative Assembly with the ability to recommend the Minister to give the Territory Planning Authority a stated direction.

### **Clause 22 Provision of planning services to others—Ministerial approval**

This clause provides for the Territory Planning Authority to provide planning services to somebody other than the Territory but only with the Minister's written approval.

### **Clause 23 Reports by authority to Minister**

This clause requires the Territory Planning Authority to be accountable to the Minister about its operations. The requirement under this clause is in addition to any other provision about the giving of reports or information by the Authority.

**Clause 24 Authority’s role in cohesive urban renewal and suburban land development**

This Clause requires the Territory Planning Authority to work with the City Renewal Authority and the Suburban Land Agency to encourage cohesive planning and development of land.

**Clause 25 Delegation by authority**

This clause provides the Territory Planning Authority to delegate its functions to staff to support the effective management of this Act.

**Part 3.4 Chief planner**

**Clause 26 Appointment of chief planner**

This clause requires the Executive to appoint a person as the Chief Planner as the statutory officeholder who performs the functions of the Territory Planning Authority. The term ‘representative body’ is defined to provide a consistent meaning in this section.

**Clause 27 Chief planner’s conditions of appointment**

This clause establishes that the employment conditions of the Chief Planner are to be agreed between the Executive and the Chief Planner, subject to any determination under the *Remuneration Tribunal Act 1995*.

**Clause 28 Chief planner must avoid conflict of interest**

This clause requires the Chief Planner to disclose any conflict of interest, real or perceived, in writing to the Executive.

**Clause 29 Chief planner must not do inconsistent work etc**

This clause requires the Chief Planner to not engage in any other paid activity without the Minister’s approval or any unpaid activity that is inconsistent with the functions of the Chief Planner or the Territory Planning Authority.

**Clause 30 Functions of chief planner**

This clause provides for the Chief Planner to exercise the functions given to the Chief Planner under this Act or another Territory law.

**Clause 31 Suspending chief planner’s appointment**

This clause provides for the Executive to suspend the Chief Planner for stated reasons to ensure the integrity of the Chief Planner is maintained.

**Clause 32 Ending chief planner’s appointment**

This clause requires the Executive to end the Chief Planner’s appointment if the Legislative Assembly passes a resolution or the Chief Planner becomes bankrupt or personally insolvent.

## **Part 3.5 Authority staff and consultants**

### **Clause 33 Authority's staff**

This clause requires any staff employed by the Chief Planner to be employed under the *Public Sector Management Act 1994*.

### **Clause 34 Arrangements for staff**

This clause provides for the Chief Planner to arrange with the head of service to use the services of a public servant.

### **Clause 35 Authority consultants**

This clause provides for the Territory Planning Authority to engage consultants on conditions agreed between the Chief Planner and the consultant.

## **Chapter 4 Strategic and spatial planning**

Chapter 4 provides the long term planning strategy and overarching spatial vision for the ACT and introduces district planning through district strategies. This Act strengthens and clarifies the role of the planning strategy within the planning system as the key strategic planning document in the Territory.

The planning strategy will shape the Territory and provide a framework through which the liveability, prosperity and wellbeing of residents can be achieved. The 2018 planning strategy will be transitioned to be in effect under this Act, once enacted until a new planning strategy is prepared for the reformed planning system.

### **Part 4.1 Strategic and spatial planning—general**

#### **Clause 36 Planning strategy**

This clause requires the Executive to make a planning strategy for the long-term planning policy and goals for the ACT in order to strengthen and clarify key strategic planning outcomes, consistent with the object of this Act.

#### **Clause 37 Consideration of planning strategy**

This clause requires the planning strategy to be considered by the Territory Planning Authority, by the Minister and by the Executive.

#### **Clause 38 District strategy**

This clause enables the Executive to make district plans for the long-term planning policy and goals for the district, in order to strength and clarify key strategic planning outcomes, consistent with the planning strategy. District strategies will be able to identify areas for future detailed planning.

### **Clause 39 Planning and response report**

This clause provides for the Territory Planning Authority to propose amendments to a district strategy through a planning and response report. The report provides future detailed planning for an area that is consistent with the policies and principles for development applying to the district.

### **Clause 40 Amendment of district strategy**

This clause allows the Minister, where satisfied, to amend a district strategy arising from a planning and response report.

### **Clause 41 Review of planning and district strategies**

This clause enables the Executive to assess whether the long term planning policy and goals for the ACT are being met with ongoing review and monitoring of the planning and district strategies.

### **Clause 42 Statement of planning priorities**

This clause provides for the Minister to give the Territory Planning Authority a written statement that sets out the priorities arising from the planning strategy and identifies the actions to be taken in the short to medium term to achieve the planning priorities.

## **Part 4.2 Subdivision design applications**

### **Clause 43 Subdivision design applications**

This clause prescribes the information to be included in a subdivision design application. An application must include a detailed plan that is consistent with the principles and policies set out in the district strategy and the provisions of the Territory Plan.

The terms 'mandatory provision' and 'subdivision development proposal' are defined to provide a consistent meaning in this section.

### **Clause 44 Effect of approval of subdivision design application**

This clause requires the Territory Planning Authority to amend the Territory Plan within a reasonable time after a subdivision design application is approved.

## **Chapter 5 Territory Plan**

Chapter 5 provides the provisions for establishing a new, outcomes-focused Territory Plan giving effect to strategic and spatial planning outcomes. The Territory Plan will 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; and
- provisions that support compliance with requirements for undertaking development.

This chapter also describes when a variation, major or minor, to the Territory Plan is required and how this is achieved.

## **Part 5.1 Establishment, object, key components and effect**

### **Clause 45 Territory plan**

This clause requires the establishment of the Territory Plan.

### **Clause 46 Object of territory plan**

This clause outlines the object of the Territory Plan by ensuring it is in a manner not inconsistent with the National Capital Plan, that the planning and development of the ACT provides the people of the ACT with an attractive, safe and efficient environment in which to live, work and have their recreation.

### **Clause 47 Territory plan to give effect to strategic planning outcomes**

This clause requires the Territory Plan to promote principles of good planning, give effect to the planning strategy and district strategies and give effect to relevant outcomes related to planning contained in other government strategies and policies.

### **Clause 48 Contents of territory plan**

This clause requires the Territory Plan to consist of:

- (a) a map that identifies districts and designated land use zones; and
- (b) set out the planning principles and policies for giving effect to the object of the plan.

It also provides for section 47 (6) of the Legislation Act to not apply to any instrument applied, adopted or incorporated in the design review panel rules. This displacement is necessary as the instruments issued under this section are regularly updated and it's not appropriate to notify the instruments and all accompanying amendments on the ACT Legislation Register.

### **Clause 49 Format of territory plan and supporting material**

This clause requires the Territory Planning Authority when preparing the Territory Plan, or amending it to make it easy for users to read and understand. The plan may be supported by background material, guide, advisory notes or anything else that the Authority considers will help readers to understand and apply the Territory Plan.

## **Clause 50 Effect of territory plan**

This clause requires the Territory, the Executive, a Minister or a Territory authority to not do any act, or approve the doing of an act, that is inconsistent with the Territory Plan.

## **Part 5.2 Territory plan—major plan amendments**

### **Division 5.2.1 Preliminary**

#### **Clause 51 Outline of major plan amendment process**

This clause sets out the process for a major plan amendment once the Territory Planning Authority starts the process which involves consulting with the public, revising the draft amendment after consultation ends, seeking a decision from the Minister unless previously withdrawn and publicly notifying the draft amendment with possible interim effect.

#### **Clause 52 Application—pt 5.2**

This clause explains that part 5.3 does not apply to amendments of the Territory Plan that are minor plan amendments.

The term ‘minor plan amendment’ is defined to provide a consistent meaning in this section.

#### **Clause 53 Definitions—pt 5.2**

This clause defines the terms ‘background papers’, ‘consultation comments’, ‘consultation notice’, ‘consultation period’, ‘corresponding major plan amendment’, ‘draft major plan amendment’, ‘interested person’, ‘major plan amendment’, ‘proponent-initiated amendment’, ‘public availability notice’ and ‘supporting report’ to provide a consistent meaning in this part.

#### **Clause 54 Meaning of interested person—pt 5.2**

This clause defines the term ‘interested person’ to provide a consistent meaning in this part.

### **Division 5.2.2 Initiation of major plan amendments**

#### **Clause 55 Proponent-initiated amendment—application**

This clause allows an interested person to apply to the Territory Planning Authority for an amendment to the Territory Plan in relation to land.

#### **Clause 56 Proponent-initiated amendment—consideration of application**

This clause requires the Territory Planning Authority to either accept or refuse to accept the application, within 3 months after the day an interested person makes an application seeking to amend the Territory Plan.

### **Clause 57 Proponent-initiated amendment—acceptance of application**

This clause sets out that where the Territory Planning Authority accepts an application, it must prepare a document to amend the Territory Plan, however is not bound to proceed with the amendment.

### **Clause 58 Authority or Minister-initiated amendments**

This clause provides for the Territory Planning Authority, on its own initiative, to prepare a draft major plan amendment to amend the Territory Plan. However, the Authority must prepare a draft major plan amendment if the Minister directs the Authority.

### **Clause 59 Supporting report for draft major plan amendment**

This clause requires the Territory Planning Authority to prepare a supporting report setting out the need of the draft major planning amendment and the positive and negative impacts of the draft amendment.

## **Division 5.2.3 Consultation**

### **Clause 60 Draft major plan amendments—consultation**

This clause requires the Territory Planning Authority to consult with the National Capital Authority, the Conservator of Flora and Fauna, the Environment Protection Authority, the Heritage Council, each referral entity and each land custodian (if applicable) in relation to a draft major plan amendment.

### **Clause 61 Public consultation—notification and availability of draft major plan amendments etc**

This clause requires the Territory Planning Authority to make the draft major plan amendment publicly available and invite people to provide written comments.

### **Clause 62 Public consultation—notice of interim effect etc**

This clause recognises that while the draft major plan amendment is on public consultation, any decision made whether consistent or inconsistent with the Territory Plan is publicly notified to provide continuity and transparency to the process.

The term ‘defined period’ is defined to provide a consistent meaning in this section.

### **Clause 63 Public inspection of comments on draft major plan amendments**

This clause provides for the comments made on the draft major plan amendment to be made publicly available for inspection.

## **Division 5.2.4 Action after consultation about draft major plan amendments**



#### **Clause 64 Revision and withdrawal of draft major plan amendments**

This clause provides for a draft major plan amendment to be revised or withdrawn after the end of the consultation period after taking into account any written comments received.

#### **Division 5.2.5 Draft major plan amendments given to Minister**

##### **Clause 65 Draft major plan amendments to be given to Minister etc**

This clause requires the Territory Planning Authority to give the Minister the draft major plan amendment for approval once the consultation period has ended.

##### **Clause 66 Public notice of documents given to Minister**

This clause requires the Territory Planning Authority to make the draft major plan amendment publicly available for inspection.

##### **Clause 67 Public availability notice—notice of interim effect etc**

This clause recognises that while the draft major plan amendment is publicly available, any decision made whether consistent or inconsistent with the Territory Plan is publicly notified to provide continuity and transparency to the process.

The term ‘defined period’ for a draft major plan amendment is defined to provide a consistent meaning in this section.

#### **Division 5.2.6 Consideration of draft major plan amendments by relevant Assembly committee**

##### **Clause 68 Certain draft major plan amendments given to Minister under s 65—action by Minister**

This clause requires the Minister, on receiving a draft major plan amendment, to refer it to the relevant Assembly committee requesting the committee to decide whether it intends to prepare a report on the draft amendment.

##### **Clause 69 Consideration of draft major plan amendments by relevant Assembly committee**

This clause requires the relevant Assembly committee to tell the Minister whether or not it will prepare a report on the draft major plan amendment.

##### **Clause 70 Committee decides not to report**

This clause explains that if the Minister has referred a draft major plan amendment to the relevant Assembly committee and the committee has decided to not prepare a report on the draft amendment the Minister must take action on the draft amendment.

##### **Clause 71 Committee reports on draft major plan amendments**

This clause explains that where the Minister has referred the draft major plan amendment to the relevant Assembly committee and the committee has

decided to prepare a report on the draft amendment, the Minister must not take action on the draft amendment until the committee has reported on the draft amendment.

#### **Clause 72 Committee fails to report promptly on draft major plan amendments**

This clause explains that where the Minister has referred a draft major plan amendment to the relevant Assembly committee and the committee has decided to prepare a report on the draft amendment but the committee has not reported on the draft amendment with the time provided, the Minister can take action in relation to the draft amendment, even though the committee has not reported on the draft amendment.

### **Division 5.2.7 Ministerial and Legislative Assembly action on draft major plan amendments**

#### **Clause 73 Minister's powers in relation to draft major plan amendments**

This clause requires the Minister to either approve a draft major plan amendment, withdraw it or return it to the Territory Planning Authority and direct the Authority to conduct further stated consultation or revision taking into account the documents given to the Minister, any recommendation made by the relevant Assembly committee, the planning strategy and any relevant district strategies.

The Minister may only approve a draft amendment if the draft amendment is not inconsistent with the planning strategy or any relevant district strategy.

#### **Clause 74 Return of draft major plan amendments to authority**

This clause provides that where the Minister returns a draft major plan amendment to the Territory Planning Authority with a direction, the Authority may revise the draft amendment and give to the Minister for approval with a written report about the Authority's response to the direction and any further revision of the draft amendment.

#### **Clause 75 Presentation of major plan amendments to Legislative Assembly**

This clause requires the Minister to present to the Legislative Assembly a major plan amendment once approved and not revoked, along with background papers and any written report for it to come into effect.

#### **Clause 76 Assembly may reject major plan amendments completely or partly**

This clause provides for the Legislative Assembly, by resolution, to reject a draft major plan amendment or a provision of draft amendment presented to the Assembly by the Minister.

### **Clause 77 Effect of dissolution etc of Legislative Assembly**

This clause sets out the process required where the Legislative Assembly is dissolved or expired after rejecting a draft major plan amendment.

The term 'rejection notice' is defined to provide a consistent meaning in this section.

### **Division 5.2.8 Commencement and publication of major plan amendments**

#### **Clause 78 Commencement and publication of major plan amendments**

This clause explains when a major plan amendment commences.

#### **Clause 79 Rejection of major plan amendments by Legislative Assembly**

This clause explains that a major plan amendment or provision of it does not come into force if rejected, or taken to be rejected by the Legislative Assembly or withdrawn.

### **Division 5.2.9 Limitations on challenge to validity of territory plan provisions**

#### **Clause 80 Limitations on challenge to validity of territory plan provisions**

This clause sets out the limitations on questioning the validity of a provision of the Territory Plan through legal proceedings.

## **Part 5.3 Territory plan—minor plan amendments**

### **Clause 81 Definitions—pt 5.3**

This clause defines the terms 'limited consultation' and 'minor plan amendment' to provide a consistent meaning in this part.

### **Clause 82 What is a minor plan amendment and is consultation needed?**

This clause explains what a minor plan amendment is and when limited consultation may be required to be undertaken under certain circumstances.

### **Clause 83 Making minor plan amendments**

This clause provides the Territory Planning Authority to only make a minor plan amendment if the amendment is not inconsistent with the planning strategy or any relevant district strategy and it is satisfied that the amendment is minor and any limited consultation has taken place.

### **Clause 84 Limited consultation**

This clause sets out the requirements to undertake limited consultation on minor plan amendments.

The term 'consultation period' is defined to provide a consistent meaning in this section.

#### **Clause 85 Rezoning—boundary changes**

This clause allows an amendment to the Territory Plan to change the boundary of a zone to encroach onto adjoining land if the change is consistent with the apparent intent of the original boundary line and the desired outcomes for the zone.

#### **Clause 86 Rezoning—development encroaching on adjoining land**

This clause allows an amendment the Territory Plan to change the boundary of a zone consistent with a development proposal if the proposal satisfies certain criteria.

The term ‘adjoining land’ is defined to provide a consistent meaning in this section.

#### **Clause 87 Minor plan amendments—future urban areas**

This clause sets out the types of amendments the Territory Planning Authority can make to the Territory Plan in regards to future urban areas.

### **Part 5.4 Review of territory plan**

#### **Clause 88 Consideration of whether review of territory plan necessary**

This clause requires the Minister, at least once every 5 years, to consider whether the Territory Plan needs to be reviewed to ensure it still meets the object of this Act, the object of the Plan, gives effect to the principles of good planning and promotes the planning strategy.

#### **Clause 89 Review of territory plan**

This clause requires the Territory Planning Authority on direction from the Minister to review the Territory Plan to consider whether the Plan remains consistent with the National Capital Plan, continues to further the object of this Act and the object of the Plan in accordance with the principles of good planning, remains consistent with the planning strategy and district strategies, takes into account any planning outcomes contained in other government strategies and policies that may be relevant, and anything else prescribed by regulation and prepare a draft review report on the Plan.

#### **Clause 90 Action after consultation about draft review report**

This clause provides for the Territory Planning Authority to revise the draft review report taking into account written comments received during the consultation period.

#### **Clause 91 Draft review report to be given to Minister etc**

This clause requires the Territory Planning Authority to give the draft review report to the Minister.

## **Chapter 6      Significant Development**

Chapter 6 introduces the concept of significant development. This Act reflects the additional documentation and additional considerations that must be taken into account when deciding an application for a significant development.

The Design Review Panel process is retained in this chapter and remains fit for purpose. The design review process is integrated into the development assessment process, with provisions allowing the Territory Planning Authority to consider the advice of the Design Review Panel during the assessment of a development application.

This Act retains the environment significance opinions and environmental impact statements from the 2007 Act, with some minor improvements to processes.

### **Part 6.1      Preliminary**

#### **Clause 92      Meaning of significant development**

This clause explains that a proposed development is a significant development if it requires a subdivision design application; consultation with the design review panel; or an environmental impact statement.

### **Part 6.2      Design review panel**

#### **Clause 93      Establishment of design review panel**

This clause establishes the Design Review Panel.

#### **Clause 94      Functions of design review panel**

This clause sets out the functions of the design review panel to provide design advice to proponents of development proposals and to exercise any other function given to the panel under this Act or another Territory law.

#### **Clause 95      Members of design review panel**

This clause establishes that the design review panel needs to consist of at least 3 members.

#### **Clause 96      Rules for design review panel**

This clause provides for the Minister to make design review panel rules for the design review panel including rules about terms of reference for the panel, constitution of the panel, conducting meetings of the panel and processes and procedures for reviewing development proposals.

It also provides for section 47 (6) of the Legislation Act to not apply to any instrument applied, adopted or incorporated in the design review panel rules. This displacement is necessary as the instruments issued under this section are regularly updated and it's not appropriate to notify the instruments and all accompanying amendments on the ACT Legislation Register.

### **Clause 97 Design principles**

This clause provides for the Minister to make design principles to be used by the design review panel in assessing development proposals under this Act.

### **Clause 98 When design review panel consultation is required**

This clause explains when the design review panel can be consulted on, about a development proposal.

### **Clause 99 Advice of design review panel**

This clause requires the design review panel to provide advice about how the proponents development proposal could be made consistent, or more consistent with any design advice.

## **Part 6.3 Environmental impact assessment**

### **Division 6.3.1 Outline and key concepts**

#### **Clause 100 Outline of environmental impact assessment**

This clause explains that for certain proposals, a formal assessment of a development proposal's potential environment impact assessment is required. This is typically in the form of an environmental impact statement or where the proposal is not likely to have a significant adverse environmental impact, an environmental significance opinion may be produced.

#### **Clause 101 Outline of EIS process**

This clause outlines the process if an environmental impact statement for a development proposal is required.

#### **Clause 102 Meaning of significant adverse environmental impact**

This clause explains that for this Act, an adverse environmental impact is significant if the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant or the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system or entity.

### **Division 6.3.2 EIS requirements**

#### **Clause 103 When EIS is required**

This clause sets out when an environmental impact statement is required for a development proposal.

#### **Clause 104 EIS—declaration by Minister**

This clause provides the Minister to declare that an environment impact statement must be undertaken for a development proposal if satisfied on reasonable grounds that there is a risk of significant adverse environmental impact from the proposed development.

### **Clause 105 Effect of declaration made after development application**

This clause provides that a development application is taken to be withdrawn if, either the Minister makes a declaration in relation to the development proposal to which the application relates or the Public Health Act Minister makes a declaration in relation to the application and the application does not satisfy the requirements for a development requiring environmental impact assessment.

### **Clause 106 Designated proponents for certain EIS decisions**

This clause allows a relevant Minister to designate a person or Territory authority as the proponent in relation to a defined decision on certain environmental impact statement decisions.

The terms 'defined decision' and 'relevant minister' are defined to provide a consistent meaning in this section.

## **Division 6.3.3 Scope of EIS**

### **Clause 107 Application for EIS scoping document**

This clause requires a proponent of a development proposal to apply to the Territory Planning Authority if an environment impact statement is required for the proposal and the Authority must identify the matters that are to be addressed by an environment impact statement and prepare the scoping document of the matters.

### **Clause 108 Contents of scoping document**

This clause sets out the requirements for the scoping document for a development proposal.

The term 'consultant' is defined to provide a consistent meaning in this section.

### **Clause 109 Time to provide scoping document**

This clause requires the Territory Planning Authority to give a scoping document for a development proposal to the proponent of the proposal.

## **Division 6.3.4 Drafting EIS**

### **Clause 110 Preparing draft EIS**

This clause requires the proponent to prepare a document that addresses each matter raised in the scoping document and give it to the Territory Planning Authority for public notification.

### **Clause 111 Recent studies to support draft EIS**

This clause allows the draft environment impact statement to refer to a recent study to address a matter identified in the scoping document for the development proposal, if the expected environmental impact of the proposal

has been addressed by a recent study, whether or not the recent study related directly to the proposal.

The term 'recent study' is defined to provide a consistent meaning in this section.

### **Division 6.3.5 Consultation on EIS**

#### **Clause 112 Public notification of draft EIS**

This clause requires the Territory Planning Authority to publicly notify the draft environment impact statement seeking representations on it.

#### **Clause 113 Representations about draft EIS**

This clause sets out that anyone may make a representation about a publicly notified draft environment impact statement provided the representation is made during the public consultation period.

#### **Clause 114 Publication of representations about draft EIS**

This clause provides for valid representations about a draft environment impact statement to be made publicly available.

#### **Clause 115 Entity consultation on draft EIS**

This clause provides for the Territory Planning Authority to consult on a draft environment impact statement with any prescribed entity.

### **Division 6.3.6 Revision of EIS**

#### **Clause 116 Revision of draft EIS**

This clause sets out the requirements for the proponent to revise the draft environment impact statement and give it to the Authority.

#### **Clause 117 Public notification of revised EIS**

This clause provides for the revised environment impact statement to be publicly notified.

### **Division 6.3.7 Consideration of EIS**

#### **Clause 118 Rejection of EIS before consideration**

This clause allows the Territory Planning Authority to reject an environment impact statement if the proponent fails to provide to the Authority.

#### **Clause 119 Authority consideration of EIS**

This clause allows the Territory Planning Authority to either accept the revised environment impact statement, take action for matters to be addressed or reject it.



### **Clause 120 Chance to address unaddressed matters**

This clause allows the Territory Planning Authority to give a proponent a second change to provide a new revised environment impact statement if not satisfied the revised environment impact statement for a development proposal meets all requirements,

### **Clause 121 Rejection of EIS after consideration**

This clause requires the Territory Planning Authority to reject the revised environment impact statement if the proponent does not provide a new revised EIS within the stated period or does respond within the stated period but the Authority remains unsatisfied.

### **Clause 122 Cost recovery**

This clause provides for the Territory Planning Authority to recover the costs of an environment impact statement.

### **Clause 123 Giving EIS to Minister**

This clause requires the Territory Planning Authority to give the environment impact statement to the Minister and if a public health environment impact statement, to the Public Health Act Minister, unless the invoice sent to the proponent remains unpaid.

### **Clause 124 EIS assessment report**

This clause requires the Territory Planning Authority to prepare an EIS assessment report that confirms the Authority is satisfied with the environmental impact statement.

### **Clause 125 Notice of no action on EIS**

This clause requires the Minister to give to the Territory Planning Authority written notice where the Minister decides not to establish an inquiry panel about the environment impact statement.

## **Division 6.3.8 Finalisation and expiry of EIS**

### **Clause 126 When EIS is finalised**

This clause sets out when an environment impact statement, other than a public health environment impact statement, is finalised.

### **Clause 127 When public health EIS is finalised**

This clause sets out when a public health environment impact statement is finalised.

### **Clause 128 Publication of finalised EIS**

This clause requires the finalised environment impact statement to be published on the Territory Planning Authority website.

### **Clause 129 When EIS expires**

This clause sets out when an environment impact statement expires.

### **Division 6.3.9 EIS inquiry panels**

#### **Clause 130 When to establish inquiry panel**

This clause requires the Minister to decide whether to establish an inquiry panel to inquire about the environment impact statement.

#### **Clause 131 How to establish inquiry panel**

This clause sets out when an inquiry panel for an environment impact statement is established.

#### **Clause 132 Time for reporting by inquiry panels**

This clause requires an inquiry panel to report in writing to the Minister on the result of the inquiry.

#### **Clause 133 Inquiry panel findings and report to be independent**

This clause requires the report of an inquiry panel to be the view of the panel based on their findings. The Minister must not direct the panel in relation to the findings or report.

#### **Clause 134 Protection of people on inquiry panels from liability**

This clause sets out the liability protection a person appointed to an inquiry panel has under this Act.

#### **Clause 135 Recovery of inquiry panel costs**

This clause explains that the direct and indirect costs to the Territory of conducting an inquiry about an environment impact statement are recoverable from the proponent of the development to which the environment impact statement relates.

### **Division 6.3.10 Environmental significance opinions**

#### **Clause 136 Application for environmental significance opinion**

This clause allows a proponent to apply to the relevant agency, under the regulations, seeking an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact on their development proposal.

#### **Clause 137 Environmental significance opinions given by authority**

This clause explains that Territory Planning Authority, if the relevant agency for an environmental significance opinion under the regulations, must not give the opinion until it has consulted with a number of entities.

The terms 'area' and 'council' have the same meaning as defined in the *Local Government Act 1993* (NSW) dictionary as in this section.

### **Clause 138 Deciding environmental significance opinion application**

This clause allows a relevant agency to require an applicant for an environmental significance opinion to give more information in support of the application. The agency, on deciding on the application must consider the proposal's environmental impact and either give the environmental significance opinion, with or without conditions or reject the application.

### **Clause 139 Costs of environmental significance opinion**

This clause provides for a relevant agency to recover from an applicant, the direct and indirect costs incurred by the agency in deciding an application for an environmental significance opinion.

### **Clause 140 Notice of environmental significance opinion**

This clause sets out the requirements for when an environmental significance opinion is provided.

## **Chapter 7 Development Assessment and approvals**

Chapter 7 sets out the provision for assessing and making decisions on development applications. It stipulates what exempt and prohibited developments are, sets out the requirements for referrals and public notification, and what constitutes a representation.

Development assessment under the 2007 Act was largely focussed on code-compliance. The rules and criteria set out in codes provide the bulk of development controls, reflecting the prescriptive and regulatory nature of the planning system.

The reformed planning system under this Act has shifted to an outcomes-focussed planning system. The development assessment process has been revised to ensure the assessment process and decision-making criteria appropriately allow for consideration of potential development outcomes and promote the achievement of good planning outcomes. This will increase the efficiency and effectiveness of the development assessment and approval system.

This Act introduces several new requirements for advice, decisions and information to be published on the Territory Planning Authority website. The publication of applications, decisions and notices on the website will mean that community and industry members can go to a single website to access all the information they need about planning in the Territory.

### **Part 7.1 Outline and important concepts**

#### **Clause 141 Outline—Ch 7**

This clause contains the key concepts for the development assessment and approvals framework, and is provided as a guide to Chapter 7. Chapter 7 sets

out the main types of development, requirements for development approval and the development approval process.

#### **Clause 142 Meaning of decision-maker—ch 7**

This clause defines the term ‘decision maker’ to provide a consistent meaning in this chapter.

### **Part 7.2 Exempt development**

Part 7.2 sets out when a proposal is considered an exempt development. These provisions provide where the authorised use of land, or of a building or other structure on land, is exempt from requiring development approval, and how exemption assessments occur.

#### **Division 7.2.1 Preliminary**

##### **Clause 143 Meaning of exempt development**

This clause defines the term ‘exempt development’ to provide a consistent meaning in this Act.

##### **Clause 144 Meaning of authorised use—pt 7.2**

This clause defines the term ‘authorised use’ of land or of a building or other structure on land to provide a consistent meaning in this part.

##### **Clause 145 Exempt development—authorised use**

This clause provides that the authorised use of land, or a building or other structure on land, is exempt from requiring development approval.

##### **Clause 146 Authorised use that is not exempt**

This clause sets out where the authorised use of land, or a building or other structure on land, is not exempt from a development approval.

The terms ‘placard quantity’ and ‘Schedule 11 hazardous chemical’ have the same meaning as defined in the *Work Health and Safety Regulation 2011* dictionary as in this section.

##### **Clause 147 Effect of s 146 on development approval**

This clause requires a proponent to apply for development approval where the authorised use of land is not exempt.

#### **Division 7.2.2 Exempt development and approvals**

##### **Clause 148 Exempt development—no need for approval**

This clause provides that an exempt development may be undertaken without a development application, development approval or an exemption assessment.

#### **Division 7.2.3 Exemption assessments**

### **Clause 149 Application for exemption assessment**

This clause allows a person to apply to a works assessor or building surveyor to assess whether a development is an exempt development.

The terms 'building surveyor' and 'works assessor' have the same meaning as defined in the *Construction Occupations (Licensing) Act 2004* section 9 and section 14A respectively as in this section.

### **Clause 150 Exemption assessment and notice**

This clause provides the process for an assessor to provide an exemption assessment D notice stating whether a development is exempt from requiring development approval.

### **Clause 151 Effect of exemption assessment D notice**

This clause sets out when a development is, or is not an exempt under an exemption assessment D notice.

## **Part 7.3 Prohibited development**

### **Division 7.3.1 Applications for prohibited development—general**

#### **Clause 152 Meaning of prohibited development**

This clause explains for this Act, when a development is a 'prohibited development' with regards to the Territory Plan and future urban areas.

#### **Clause 153 Development applications prohibited except in stated circumstances**

This clause sets out when the Territory Planning Authority can accept a development application for approval of a prohibited development.

#### **Clause 154 Applications for development approval in relation to use for otherwise prohibited development**

This clause allows a person to apply to the Territory Planning Authority for a development approval of a prohibited development.

The term 'authorised use' of land or of a building or other structure on land is defined to provide a consistent meaning in this section.

#### **Clause 155 Applications in anticipation of major plan amendment**

This clause allows a person to apply to the Territory Planning Authority for approval of a development proposal after the Minister has been provided with a draft major plan amendment.

The term 'relevant development proposal' in relation to a draft major plan is defined to provide a consistent meaning in this section.

### **Clause 156 Declaration for development encroaching on adjoining land if development prohibited**

This clause allows a person to apply to the Territory Planning Authority for a declaration if a development proposal encroaches onto land owned by the Territory and the development is prohibited on the adjoining land subject to certain criteria being met.

### **Clause 157 Applications for development encroaching on adjoining land if development prohibited**

This clause provides the application process for a development application in relation to prohibited development encroaching on adjoining land.

The terms 'adjoining land' and 'encroachment' are defined to provide a consistent meaning in this section.

## **Division 7.3.2 Prohibited waste facility development applications**

### **Clause 158 Object—div 7.3.2**

This clause sets out the objective of this division which is to contribute to the orderly and sustainable development of waste facilities in the ACT by limiting the development of new waste facilities in the division of Fyshwick.

### **Clause 159 Certain development applications for waste facilities prohibited**

This clause states that the Territory Planning Authority must not accept a prohibited waste facility development application.

The terms 'handle' in relation to waste, 'prohibited waste facility development application', 'waste' and 'waste facility' are defined to provide a consistent meaning in this section.

### **Clause 160 Compensation—safety net**

This clause allows a person to seek compensation where the prohibition on a waste facility development application would result in the acquisition of property otherwise than on just terms under section 23 (1) (a) of the *Self-Government Act*.

The term 'prohibited waste facility development application' is defined to provide a consistent meaning in this section.

## **Part 7.4 Development in designated areas**

### **Clause 161 Development proposal for lease variation in designated area**

This clause sets out which provisions in this Act do not apply to a development proposal for a variation of a lease in a designated area.

## **Part 7.5 Assessable development**

### **Division 7.5.1 Pre-application matters**

#### **Clause 162 Consideration of development proposals**

This clause provides that the Territory Planning Authority must provide advice on a development proposal, unless the information provided would not allow the Authority to provide adequate advice.

#### **Clause 163 Advice on development proposals**

This clause requires the Territory Planning Authority to advise the proponent about the likely requirements and assessment process for the development proposal.

### **Division 7.5.2 Making a development application**

#### **Clause 164 Application for development approval**

This clause sets out the application process for a development approval.

#### **Clause 165 Development applications—authority may request more information**

This clause allows the Territory Planning Authority to seek more information in relation to a development application.

#### **Clause 166 Amendment of development application**

This clause allows the Territory Planning Authority to amend a development application on request by the applicant subject to certain criteria being met.

#### **Clause 167 Correction of development application**

This clause allows the Territory Planning Authority to correct a formal error in a development application where the correction would adversely affect someone other than the applicant.

### **Division 7.5.3 Referral of development applications**

The continued importance of entity referral and public notification is recognised in this Act. Provision is made for a regulation or the Territory Plan to outline when a development application is required to be referred to stated entities. The Territory Plan continues to prescribe the bulk of entity referral requirements, tailored to the nature and impact of development applications.

#### **Clause 168 When authority must refer development application**

This clause sets out when the Territory Planning Authority must refer a development application to entities.

**Clause 169 Further entity referral—more information or amended application**

This clause sets out when the Territory Planning Authority is required to refer a development application previously referred to an entity on the application being amended.

**Clause 170 Entity advice on development applications**

This clause requires an entity to give the Territory Planning Authority its advice in relation to a development application within the timeframe prescribed by regulation.

**Clause 171 Effect of approvals or advice in development applications**

This clause requires an entity once a development application has been approved to act consistently with the approval unless additional information comes to light.

**Division 7.5.4 Public notification of development applications**

**Clause 172 Definitions—div 7.5.4**

This clause defines the terms ‘adjoins’ and ‘registered interest holder’ to provide a consistent meaning in this division.

**Clause 173 Authority must publicly notify development applications**

This clause requires the Territory Planning Authority to publicly notify a development application.

**Clause 174 Notice of development applications—adjoining land**

This clause sets out when the Territory Planning Authority must give written notice of the development application to the registered proprietor of the lease of adjoining and non-adjoining land if impacted by the development.

**Clause 175 Notice of development applications—lease variations**

This clause sets out to whom the Territory Planning Authority must give written notice to, of a development application that is for or includes a lease variation.

**Clause 176 Further public notification—changed application**

This clause sets out when the Territory Planning Authority is required to publicly notify a development application that has already been publicly notified but where the development application has been amended.

**Division 7.5.5 Representations about development applications**

**Clause 177 Making representations about development applications**

This clause sets out how a person can make a representation about a development application.



## **Division 7.5.6 Notice of development applications to registrar-general**

### **Clause 178 Notice of development applications**

This clause requires the Territory Planning Authority to give written notice of each development application submitted to the registrar-general for recording under part 8A of the *Land Titles Act 1925*.

## **Division 7.5.7 Pre-decision advice**

This Act introduces an important new stage into the development assessment process - pre-decision advice. This stage allows the Territory Planning Authority to provide advice to an applicant for development approval prior to making a formal decision in relation to the application. The shift to an outcomes-focussed planning system means the Authority's role is expanded. It must consider whether development proposals are achieving good planning outcomes. This new process has been introduced to facilitate the Authority's expanded role.

Consistent with the goals of increasing transparency and accessibility of information, this Act requires the Authority to publish on its website any pre-decision advice it gives.

### **Clause 179 Authority may give advice**

This clause sets out how the Territory Planning Authority may give pre-decision advice on a development application.

## **Division 7.5.8 Development applications—termination**

### **Clause 180 Withdrawal of development applications**

This clause provides an applicant to withdraw a development application at any time before the application is decided.

### **Clause 181 Refusal, rejection or withdrawal of concurrent documents**

This clause sets out that where a development application is a concurrent development application and where a concurrent document relating to the application is not approved, the Authority is taken to have refused the concurrent application.

The term 'concurrent document' is defined to provide a consistent meaning in this section.

## **Part 7.6 Development approval**

### **Division 7.6.1 Deciding development applications**

#### **Clause 182 Deciding development applications**

This clause sets out the types of decisions a decision-maker must make on a development application, what to consider when making a decision on a concurrent application and matters involving approvals relating to regulated

trees. The Minister as the decision-maker for Territory Priority Projects must receive advice from the Territory Planning Authority before making a decision.

The term 'approve' is defined to provide a consistent meaning in this section.

The term 'tree management plan' has the same meaning as defined in the *Tree Protection Act 2005* dictionary as in this section.

### **Clause 183 Considerations when deciding development applications**

This clause sets out the matters a decision maker must consider when making a decision on a development application.

### **Clause 184 Conditional approvals**

This clause sets out the conditions of approval that may be included by the Territory Planning Authority in approving a development application.

### **Clause 185 Essential design elements**

This clause requires an essential design element to be identified in a development approval.

### **Clause 186 Restrictions on development approval**

This clause sets out what a development proposal must be consistent with for a decision-maker to consider approving a development application, the status of entity advice and when the decision-maker may refuse an application.

The terms 'affected building' and 'affected residential premises' have the same meaning as defined in the *Dangerous Substances Act 2004* section 471 as in this section.

The terms 'development proposal' and 'remediation development' are defined to provide a consistent meaning in this section.

### **Clause 187 Development approval contrary to entity advice**

This clause sets out when a decision maker may approve a development approval that is contrary to advice provided by an entity.

The term 'development proposal' is defined to provide a consistent meaning in this section.

### **Clause 188 Referral of matter protected by the Commonwealth**

This clause requires a decision maker, where a proposed development is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth to refer the proposed decision to the Commonwealth Minister responsible for administering the EPBC Act before making the decision.

### **Clause 189 Time to decide development applications**

This clause sets out the timeframes for deciding a development application.

This Act adopts a simple and certain approach to timeframes for development assessment processes. This approach replaces the lengthy and detailed provisions in the 2007 Act for working out the time within which a development application must be decided.

This Act adopts the model of a complete application: time for deciding an application runs from the day on which the Territory Planning Authority is provided with all required information for deciding the development application. If, on closer inspection, further information is required, the clock for deciding the development application stops on the day the Authority requests further information and starts again when the requested information is provided to the Authority. If an application is amended, it is considered a new application for the purposes of decision timeframes.

The terms 'day the concurrent process is completed' and 'working day' are defined to provide a consistent meaning in this section.

#### **Clause 190 Development applications not decided within time**

This clause sets out how a development application not decided within the statutory timeframes are dealt with.

#### **Clause 191 Lease to be varied to give effect to development approval**

This clause requires the Territory Planning Authority to vary a lease in accordance with a development approval.

#### **Clause 192 Refusal does not affect existing use**

This clause sets out that the refusal of a development application in relation to the use of land does not affect an existing use of land, or use of existing developments on the land.

### **Division 7.6.2 Notice of decisions on development applications**

#### **Clause 193 Notice of decision**

This clause sets out who must receive notice of a development application decision and what must be included in the notice.

### **Division 7.6.3 Reconsideration of decisions on development applications**

The reforms to this Act retain the availability of internal reconsideration where a development application is refused by the decision-maker. Minor amendments to the 2007 Act have been made to provide for the appropriateness of the internal review process:

- The Territory Planning Authority must have a decision-maker more senior to the original decision-maker make the decision upon reconsideration

- Reconsideration is not available where the Chief Planner made the original decision (reflecting that the Chief Planner is the most senior decision-maker).

#### **Clause 194 Definitions—div 7.6.3**

The terms ‘original application’, ‘original decision’ and ‘reconsideration application’ have been defined to provide a consistent in this division.

#### **Clause 195 Applications for reconsideration**

This clause allows the applicant of a development application, to apply for a reconsideration of an original decision.

#### **Clause 196 Reconsideration**

This clause sets out the requirements for reconsideration of a development application.

#### **Clause 197 Effect of ACAT application on reconsideration**

This clause states that an application to ACAT cannot be made by a third party (i.e. an entity other than the applicant for the development approval or the Territory Planning Authority).

The term ‘third party’ is defined to provide a consistent meaning in this section.

#### **Clause 198 Notice of decisions on reconsideration**

This clause sets out who receives a reconsideration notice of decision.

#### **Clause 199 No action by authority within time**

This clause states that where the Territory Planning Authority does not make a decision within the statutory timeframes for deciding a reconsideration application, the Authority is taken to have confirmed the original decision, however may still reconsider the original application even if the time for deciding the application ends.

### **Division 7.6.4 Correction and amendment of development approvals**

#### **Clause 200 Correcting development approvals**

This clause allows the Territory Planning Authority to correct a formal error in a development approval.

#### **Clause 201 Revocation of development approvals**

This clause allows the Territory Planning Authority to revoke a development approval where satisfied the approval was obtained dishonestly.

#### **Clause 202 Applications to amend development approvals**

This clause sets out the requirements to be undertaken in amending a development approval.

### **Clause 203 Deciding applications to amend development approvals**

This clause sets out how what needs to be considered when deciding on an application to amend a development application.

### **Clause 204 Exception to s 203 (1) (b)—referral requirements**

This clause sets out that the decision maker only needs to refer an amendment to a development application to an entity where it would affect a part of the development application where advice was provided, or it contains matters which it is reasonable expected the entity would provide comment.

### **Clause 205 Exception to s 203 (1) (b)—waiver of notification requirement**

This clause allows the decision maker to waive the requirement to publicly notify an application to amend a development approval subject to a number of criteria being met.

### **Clause 206 When development approvals do not require amendment**

This clause sets out when an application to amend a development approval is not required.

## **Division 7.6.5 Effect and duration of development approvals**

### **Clause 207 When development approvals take effect**

This clause sets out when a development approval is taken to have effect.

The provisions that set out when development approvals take effect are necessarily complicated, having regard to the various events that may need to happen before a development approval can take effect.

These events include the expiration of a period within which an affected entity might apply for ACAT review, the variation of a lease to allow the development subject of the approval, and the satisfaction of conditions that are expressed as being pre-conditions to the approval taking effect.

The substance of the provisions outlining when a development approval takes effect has not changed from the provisions in the 2007 Act, however this Act aims to express these concepts more simply.

The terms 'application for ACAT review', 'approval decision', 'reconsideration application', 'reconsideration decision', 'representation' and 'third party' are defined to provide a consistent meaning in this section.

### **Clause 208 End of development approvals generally**

This clause sets out a revised approach to the ending of development approvals. The provisions in the 2007 Act do not reflect the practical realities of other planning, construction and financing processes that travel alongside a development approval. This Act takes a less prescriptive approach, providing a single timeframe within which the development (subject of the approval) must be started and finished. This gives an overarching timespan, and a proponent can undertake development within this timespan taking into account their individual needs and constraints.

### **Clause 209 End of development approvals for lease variations**

This clause provides separate provisions for the ending of development approvals relating to lease variations.

### **Clause 210 End of development approvals for use**

This clause sets out when a development approval ends that relates only to the use of land, or a building or other structure on the land under a lease or declared unit title lease.

The term 'declared unit title lease' is defined to provide a consistent meaning in this section.

### **Clause 211 Development approval continues unless ended**

This clause states that a development approval, including a development approval that has been extended, continues unless ended under this part.

## **Part 7.7 Development applications for development undertaken without approval**

### **Clause 212 Development applications for development undertaken without approval**

This clause allows a lessee to apply to the Territory Planning Authority for development approval where a development has been undertaken with no approval but required approval. The Authority must treat the application seeking approval for the development as if the development had not been undertaken.

## **Chapter 8 Territory priority projects**

Chapter 8 explains what developments can be considered as a Territory Priority Project and how a Territory Priority Project is declared by the Minister. Under the 2007 Act, the Minister has a 'call-in' power where the Minister is able to direct the Planning and Land Authority to refer a development application to the Minister for consideration and potential decision. This power under this Act has been omitted with the Territory Priority Project declaration power has many of the same substantive and procedural consequences.

### **Clause 213 Meaning of territory priority project**

This clause defines the term 'territory priority project' to provide a consistent meaning in this Act.

### **Clause 214 Meaning of related to light rail**

This clause defines the term 'related to light rail' to provide a consistent meaning in this Act.

### **Clause 215 Declaration of territory priority projects**

This clause provides for the Minister together with the Chief Minister to declare a development proposal as a territory priority project if satisfied that the proposal would achieve a major government policy outcome that is of significant benefit to the people of the ACT, would substantially facilitate the achievement of desired future planning outcomes, or is for significant infrastructure or facilities, that are of significant benefit to the people of the ACT. The Minister may seek advice from the Territory Planning Authority prior to making a declaration.

The terms 'development proposal' and 'supporting report' are defined to provide a consistent meaning in this section.

### **Clause 216 Time limits on proceedings—territory priority projects**

This clause sets out when a person can start legal proceedings in relation to a decision to make a territory priority project declaration.

## **Chapter 9 Offsets**

Chapter 9 sets out the requirements for offsets in line with an offset policy. An offset register must be kept, and the offset policy is required to be considered for reviewed at least once every five years. The offsets provisions have been retained from the 2007 Act and will be reviewed in accordance with any changes made to the *Environmental Protection and Biodiversity Conservation Act 1999* which impact these provisions, any ACT specific issues with the administration of offsets, and the processes for managing offset areas.

### **Part 9.1 Important concepts**

#### **Clause 217 Meaning of protected matter**

This clause defines the term 'protected matter' to provide a consistent meaning in this Act.

#### **Clause 218 Meaning of matter protected by the Commonwealth**

This clause defines the term 'matter protected by the Commonwealth' as having the same meaning as defined in the EPBC Act chapter 2, part 3 as in this Act.

The term 'matter protected' has the same meaning as defined in the EPBC Act section 34 as in this section.

#### **Clause 219 Meaning of offset**

This clause defines the term 'offset' to provide a consistent meaning in this Act.

#### **Clause 220 Meaning of offsets policy**

This clause defines the term 'offsets policy' to provide a consistent meaning in this Act.

## **Part 9.2 Offsets policy**

### **Division 9.2.1 Preliminary**

#### **Clause 221 Meaning of Minister—pt 9.2**

This clause defines the term ‘Minister’ to provide a consistent meaning in this part.

### **Division 9.2.2 Initial offsets policy**

#### **Clause 222 Initial offsets policy**

This clause allows the Minister to make an initial offsets policy.

### **Division 9.2.3 Revised offsets policy**

#### **Clause 223 Offsets policy—monitoring and review**

This clause requires the Minister to monitor the effectiveness of the offsets policy and consider whether the policy needs to be reviewed to ensure it continues to manage the adverse impacts of development on threatened species and habitats.

#### **Clause 224 Draft revised offsets policy—Minister to prepare**

This clause requires the Minister to prepare a draft revised offsets policy if the Minister considers revisions to the policy are appropriate.

#### **Clause 225 Draft revised offsets policy—public consultation**

This clause provides for a draft revised offsets policy to be publicly notified.

#### **Clause 226 Draft revised offsets policy—revision**

This clause requires the Minister to consider any submissions received during the consultation period and to take them consideration in the final version of the offsets policy.

#### **Clause 227 Draft revised offsets policy—final version and notification**

This clause clarifies that a final version of a draft revised offsets policy prepared under section 226 or section 228 is an offsets policy.

#### **Clause 228 Offsets policy—minor amendments**

This clause allows the Minister to make minor amendments to an existing offsets policy.

The term ‘minor amendment’ is defined to provide a consistent meaning in this section.

### **Division 9.2.4 Offsets policy—implementation and guidelines**



**Clause 229 Offsets policy—authority to implement**

This clause requires the Territory Planning Authority to take reasonable steps to implement the offsets policy.

**Clause 230 Offsets policy—guidelines**

This clause provides for the Minister to make guidelines about the implementation of the offsets policy.

**Clause 231 Draft offsets policy guidelines**

This clause sets out the requirements for the Minister to prepare a draft version of the offsets policy guidelines.

**Clause 232 Draft offsets policy guidelines—public consultation**

This clause provides for the draft offsets policy guidelines to be publicly notified.

**Clause 233 Draft offsets policy guidelines—revision**

This clause provides the Minister to revise the draft offsets policy guidelines taking into account submissions received during the consultation period.

**Clause 234 Offsets policy guidelines—monitoring and review**

This clause requires the Minister to monitor the effectiveness of the offsets policy guidelines and consider whether the guidelines need to be reviewed to ensure it continues to support the offsets policy.

**Part 9.3 Offsets policy—other provisions****Clause 235 Offsets—consistency with offsets policy**

This clause states that an offset must be consistent with the offsets policy.

**Clause 236 Offsets—calculating value**

This clause allows the Minister to determine how the value of an offset is to be calculated.

**Clause 237 Offsets—form**

This clause explains that for a development, an offset may be in a form prescribed by regulation or any other form the Territory Planning Authority considers appropriate.

**Clause 238 Offsets register**

This clause sets out the information required to be kept on an offsets register.

## **Part 9.4 Offset conditions**

### **Clause 239 Meaning of decision-maker—pt 9.4**

This clause defines the term ‘decision-maker’ to provide a consistent meaning in this part.

### **Clause 240 Meaning of offset condition**

This clause defines the term ‘offset condition’ to provide a consistent meaning in this Act.

The term ‘offset land’ is defined to provide a consistent meaning in this section.

### **Clause 241 Meaning of offset management plan**

This clause defines the term ‘offset management plan’ to provide a consistent meaning in this Act.

### **Clause 242 Meaning of offset manager**

This clause defines the term ‘offset manager’ to provide a consistent meaning in this Act.

### **Clause 243 Draft offset management plan—proponent to prepare**

This clause requires the proponent to prepare a draft offset management plan if an offset condition in a development approval requires one.

### **Clause 244 Draft offset management plan—submission to decision-maker**

This clause requires the proponent to submit the draft offset management plan to the decision-maker for approval.

### **Clause 245 Draft offset management plan—decision-maker’s direction to revise etc**

This clause sets out how a proponent is to revise a draft offset management plan if directed to do so by the decision-maker.

### **Clause 246 Offset management plan—unleased land or public land**

This clause requires the custodian of the land, if an offset management plan applies to unleased land or public land, to take reasonable steps to implement the plan.

### **Clause 247 Offset management plan—amendment initiated by offset manager**

This clause provides the offset manager for an offset management plan to apply to the decision-maker to amend the plan.

### **Clause 248 Offset management plan—amendment initiated by decision-maker**

This clause sets out the process for the decision-maker to consider amending an offset management plan.

### **Clause 249 Offset management plan—reporting**

This clause sets out the reporting requirements for an offset management plan.

### **Clause 250 Offset management plan—expiry if development approval ends**

This clause explains when an offset management plan expires.

### **Clause 251 Offset power must not be delegated**

This clause states that a decision-maker must not delegate a power under this chapter.

## **Chapter 10 Leases and licences**

Chapter 10 sets out the process for leasehold administration for the Territory. The leasehold system is central to the system of title by registration and regulating the use of land, predominantly through lease purpose clauses.

The policy positions underpinning leasing and licencing remain unchanged with two exceptions. How the concessional status of leases are to be removed and the temporary use of land for a purpose other than permitted under the lease.

### **Part 10.1 Preliminary**

#### **Clause 252 Definitions—ch 10**

This clause defines the terms ‘building and development provision’, ‘consolidation’, ‘lessee’, ‘market value’, ‘provision’, ‘registered proprietor’, ‘rental lease’, ‘residential lease’, ‘rural lease’, ‘single dwelling house lease’, ‘subdivision’ and ‘sublease’ to provide a consistent meaning in this chapter.

#### **Clause 253 Meaning of lease—Act**

This clause defines the term ‘lease’ to provide a consistent meaning in this Act.

#### **Clause 254 When is a lease a concessional lease—Act**

This clause defines the term ‘concessional lease’ to provide a consistent meaning in this Act.

The terms ‘consolidated or subdivided concessional lease’, further concessional lease’, ‘paid’ and ‘regranted concessional lease’ are defined to provide a consistent meaning in this section.

### **Clause 255 Meaning of market value lease—Act**

This clause defines the term ‘market value lease’ to provide a consistent meaning in this Act and schedule 3, part 3.2.

### **Clause 256 Meaning of possibly concessional—Act**

This clause defines the term ‘possibly concessional’ to provide a consistent meaning in this Act and schedule 3, part 3.3.

## **Part 10.2 Grants of leases generally**

### **Division 10.2.1 Grants of leases**

#### **Clause 257 Effect subject to pt 10.8**

This clause establishes that this part has effect subject to part 10.8 (Rural leases).

#### **Clause 258 Authority may grant leases**

This clause authorises the Territory Planning Authority to grant leases on behalf of the Executive and subsequently the Commonwealth.

#### **Clause 259 Granting leases**

This clause sets out the processes to be used by the Territory Planning Authority in granting leases by either auction, tender, ballot or direct sale.

#### **Clause 260 Lease conditional on approval for stated development**

This clause sets out when a lessee is required to obtain approval from the Territory Planning Authority to undertake development on the land.

#### **Clause 261 Eligibility for grant of lease**

This clause allows the Territory Planning Authority to restrict the grant of a lease to eligible people only under an auction, tender, ballot or direct sale process to promote equality by allowing people who otherwise would not be able to purchase a lease to be able to, for example, under the affordable home purchase scheme with eligibility criteria based on income thresholds.

#### **Clause 262 Restriction on direct sale by authority**

This clause sets out the circumstances in which the Territory Planning Authority can grant a lease by direct sale and is satisfied that one or more grant objectives have been meet.

The terms ‘adjoining land’, ‘encroachment’ and ‘grant objective’ are defined to provide a consistent meaning in this section.

The term ‘single dwelling house’ has the same meaning as defined in the Territory Plan as in this section.

### **Clause 263 Direct sale if single person in restricted class**

This clause sets out the circumstances in which the Territory Planning Authority can grant a lease to a person by direct sale as only 1 person is eligible for the grant.

### **Clause 264 Notice of direct sale**

This clause requires the Territory Planning Authority to report on the number of single dwelling house leases and other leases granted during a quarter by direct sale to the Minister.

The terms 'other direct sale lease' and 'prescribed information' are defined to provide a consistent meaning in this section.

### **Clause 265 Direct sale leases subject to certain provisions**

This clause sets out that a lease granted by direct sale must be granted subject to provisions that are agreed too between the Territory Planning Authority and the applicant for the lease.

### **Clause 266 Authority need not grant lease**

This clause allows the Territory Planning Authority the right, to not grant a lease even after invitations have been requested and may invite fresh applications with the same or other conditions in the lease.

### **Clause 267 Planning report before granting leases**

This clause allows the Territory Planning Authority to prepare a planning report in relation to a proposal to grant a lease.

### **Clause 268 Lease must provide access by road etc**

This clause requires the Territory Planning Authority to not grant a lease unless satisfied that, the lessee has direct access to the leased land from a road or road related area or some other form of access.

The terms 'road' and 'road related area' have the same meaning as defined in the *Road Transport (General) Act 1999* dictionary as in this section.

### **Clause 269 Failure to accept and execute lease**

This clause provides the Territory Planning Authority to end a person's right to be granted a lease if they fail to accept and execute the lease or fail to pay any amount required to be paid before being granted the lease.

## **Division 10.2.2 Payment of leases**

### **Clause 270 Payment for leases generally**

This clause states that the Territory Planning Authority must grant a lease for not less than market value unless it is a lease mentioned under sub-section (2) in this section. The market value of a lease is determined at the time the Territory enters into the contract for the grant.

### **Clause 271 Payment for adjoining concessional leases**

This clause sets out the payment required to be paid for a new lease granted by the Territory Planning Authority where the new lease adjoins another lease granted to the same person and is a concessional lease.

The term 'repealed Act' is defined to provide a consistent meaning in this section.

### **Division 10.2.3 Use of leased land**

#### **Clause 272 Use of land for leased purpose**

This clause stipulates that land, and any building or other structure, on a lease must be used for the purpose authorised by the lease or this Act. However, a residential lease may also be used for a home business.

The term 'home business' is defined to provide a consistent meaning in this section.

#### **Clause 273 Authority may authorise temporary use of land for special circumstances**

This clause allows the Territory Planning Authority to authorise the temporary use of land, and any building or other structure, other than a purpose authorised by the lease if satisfied it is needed urgently and will achieve a significant public benefit.

#### **Clause 274 No right to use, flow and control of water**

This clause states a lease granted under this chapter does not give a right to the use, flow and control of water (including water containing impurities) under the lease.

### **Division 10.2.4 Dealings with leases**

#### **Clause 275 Leases to which restrictions under s 276 applies**

This clause lists the types of leases which contain a provision requiring the approval from the Territory Planning Authority under section 276 before any dealings can take place on the lease by the lessee.

#### **Clause 276 Restriction on transfer, assignment and parting with possession**

This clause explains that a lessee, or anyone else with an interest in the lease, must not undertake any dealings on a lease containing a provision requiring the approval from the Territory Planning Authority without the approval of the Authority.

The term 'restricted period' is defined to provide a consistent meaning in this section.

#### **Clause 277 Approval to transfer, assign, or part with possession**

This clause provides the Territory Planning Authority to approve a dealing in relation to lease, only if satisfied the person to whom the lease is going to,

satisfies the criteria prescribed under section 262 or would have been granted the original lease.

**Clause 278 Restrictions on transfer, assignment and parting with possession—certain University of NSW leases**

This clause restricts all dealings on a lease granted to the University of NSW for a period of 20 years from the date it is granted. After the 20 year period has expired, approval from the Territory Planning Authority is required for any dealings.

The term 'deal' is defined to provide a consistent meaning in this section.

**Clause 279 Approval to transfer, assign, or part with possession—certain University of NSW leases**

This clause sets out the conditions the Territory Planning Authority must abide by when providing approval to a dealing under section 278.

**Clause 280 Restriction on subletting of land**

This clause requires the Lessee to not sublease any part of their lease without the Territory Planning Authority's prior written approval. The Authority must make a decision on the sublease taking into account a number of factors.

The terms 'road' and 'road-related area' have the same meaning as defined in the *Road Transport (General) Act 1999* dictionary as in this section.

**Clause 281 Subletting part of building**

This clause sets out the requirements for subletting part of, or the whole building on a lease, which may also include the subletting of land provided the land adjoins that part of the building being sublet.

**Clause 282 Subletting for siting of mobile homes**

This clause sets out the requirements for the subletting of the siting of a mobile home within a mobile home park.

The terms 'mobile home' and 'mobile home park' are defined to provide a consistent meaning in this section.

**Clause 283 Land leased to be held as undivided parcel**

This clause sets out the requirements for a lessee to hold a lease as 1 undivided parcel unless section 280, section 281 or section 282 provides otherwise. A lease may be sublet and any interest in a lease it may be assigned, transferred or mortgaged, unless a provision in this chapter provides otherwise.

**Clause 284 Leases held by Territory not to be transferred or assigned**

This clause allows the Territory to enter into a sublease over a lease where the Territory is the registered proprietor however, the Territory is not allowed to transfer or assign a lease it is the registered proprietor of.

## **Part 10.3 Grants of further leases**

### **Clause 285 Grant of further leases**

This clause sets out the requirements for when a lessee may apply to the Territory Planning Authority for a further lease and the Authority must consider granting the further lease provided the Territory or the Commonwealth does not need the land for a public purpose.

### **Clause 286 Grant of further lease includes same authorised use**

This clause provides for a further lease that is granted on the surrender of an existing lease to authorise each use provided for in the surrendered lease. However, a further lease may include provisions that are different from the lease it is replacing if a lease variation was applied for at the same time.

## **Part 10.4 Grants of concessional leases to community organisations**

### **Clause 287 Meaning of community lease and community lease use**

This clause defines the terms ‘community lease’ and ‘community lease use’ to provide a consistent meaning in this Act.

The term ‘community use’ is defined to provide a consistent meaning in this section.

### **Clause 288 Meaning of community lease provisions**

This clause defines the term ‘community lease provisions’ to provide a consistent meaning in this Act.

### **Clause 289 Grant of community lease by direct sale**

This clause sets out the requirements for the Territory Planning Authority, when considering whether to grant a community lease by direct sale and satisfied the grant will achieve the objective of delivering a service that provides ongoing benefits to the community.

### **Clause 290 Statement of future community land for stated districts**

This clause enables the Territory Planning Authority to identify 1 or more areas of land within a stated district to be leased for community uses and provide a statement satisfying the government’s priorities in relation to the community use of the land.

### **Clause 291 Grant of community lease by tender**

This clause sets out the requirements for the Territory Planning Authority when considering whether to grant a community lease by tender and satisfied the land will only be used for community lease uses.

The terms ‘block’ and ‘section’ have the same meaning as defined in the *Districts Act 2002* dictionary as in this section.



### **Clause 292 Community use reports**

This clause requires the lessee of a lease to provide to the Territory Planning Authority each financial year, a report about how the lessee's use of the land has benefitted the broader community during the financial year.

### **Clause 293 Audit of use of community lease land**

This clause allows the Territory Planning Authority to require the lessee of a community lease to commission an audit of the use of the land and the lessee must make all records relating to their use of the land available to the auditor for examination.

## **Part 10.5 Concessional leases**

### **Division 10.5.1 Deciding whether leases concessional**

#### **Clause 294 Application for decision about whether lease concessional**

This clause allows a lessee to apply to the Territory Planning Authority for a decision on whether a lease is concessional.

#### **Clause 295 Decision about whether lease concessional**

This clause sets out the requirements for the Territory Planning Authority to consider when making a decision on whether a lease is concessional on the lodgement of an application.

#### **Clause 296 Authority may decide if lease concessional on own initiative**

This clause sets out the requirements for the Territory Planning Authority to consider when making a decision on whether a lease is concessional where the Authority has decided on its own initiative as to whether a lease is concessional.

#### **Clause 297 Review of certain decisions about concessional status of lease**

This clause allows a lessee to seek a review from the Territory Planning Authority regarding a decision relating to the concessional status of a lease. The Authority must consider any additional information in the review process.

#### **Clause 298 Lodging notice of decision about concessional status of lease**

This clause sets out that a notice must be lodged by the Territory Planning Authority with the Registrar-General once a decision on the concessional status of a lease has been made.

#### **Clause 299 Concessional status of leases**

This clause provides for a person to rely on and deal with a lease that has been deemed as a concessional lease.

### **Clause 300 Non-concessional status of leases**

This clause provides for a person to rely on and deal with a lease that has been deemed as a market value lease.

### **Clause 301 Concessional status guidelines**

This clause provides for the Territory Planning Authority to make guidelines to assist people in deciding whether a lease is a concessional lease, a market value lease or a possibly concessional lease.

## **Division 10.5.2 Restrictions on dealings with concessional leases**

### **Clause 302 Restrictions on dealings with concessional leases**

This clause explains that a lessee, or anyone else with an interest in a concessional lease, must not undertake any dealings in the lease without the previous approval of the Territory Planning Authority.

### **Clause 303 Approval of dealings with concessional leases**

This clause enables the Territory Planning Authority to consider, once satisfied, approving a dealing under section 302 in relation to a concessional lease requiring the approval of the Authority.

## **Division 10.5.3 Varying concessional leases to remove concessional status**

### **Clause 304 Removal of concessional status by variation of lease**

This clause provides that the concessional status of a lease can only be removed by a variation of the lease. However this section does not apply to a review of a decision about the concessional status of a lease under section 297.

### **Clause 305 Development application to remove concessional status of lease**

This clause sets out the process for when the Territory Planning Authority refers a development application seeking to remove the concessional status of a concessional lease to the Minister for a decision.

### **Clause 306 Development approval to remove concessional status subject to condition**

This clause explains that where the Minister approves a development application to vary a concessional lease by removing its concessional status, the approval is subject to a condition that the lessee pays the amount worked out under section 307.

### **Clause 307 Working out amount payable to remove concessional status**

This clause provides the formula to be used when determining the amount to be paid by a lessee of a concessional lease which has had its concessional status removed.

### **Clause 308 Uses under leases varied by surrender and regrant to remove concessional status**

This clause provides for a concessional lease that has only been varied to remove the concessional status by way of a surrender and regrant, for the regranted lease to authorise each use provided for under the surrendered concessional lease.

## **Part 10.6 Rent variations and relief from provisions of leases**

### **Clause 309 Application to land rent—pt 10.6**

This clause states that this part does not apply to a variation of land rent under a land rent lease.

### **Clause 310 Variations of rent**

This clause requires the Territory Planning Authority to notify a lessee if the land rent payable under their lease is varied.

### **Clause 311 Review of variations of rent**

This clause allows the lessee to ask the Territory Planning Authority to review the decision to vary their land rent payable under their lease.

### **Clause 312 Reduction of rent and relief from provisions of lease**

This clause sets out the process the Territory Planning Authority considers in either reducing the amount of land rent payable or providing relief to not have to pay the land rent required under their lease. The Authority may include any condition in an approval.

## **Part 10.7 Lease variations**

### **Division 10.7.1 Lease variations—general**

#### **Clause 313 Effect subject to pt 10.8**

This clause states that part 10.7 (Lease variations) has effect subject to part 10.8 (Rural lease).

### **Division 10.7.2 Variation of rental leases**

#### **Clause 314 Variation of rental leases**

This clause requires the Territory Planning Authority to not execute a variation to a rental lease unless all rent required to be paid under the lease has been paid. Where the Authority executes a variation to a rental lease, it must reassess the rent payable under the lease and adjust the assessment to the day the variation is executed.

### **Clause 315 Advice of rent payable on variation of lease**

This clause requires the Territory Planning Authority, on approving a lease variation to a lease (other than a land rent lease), work out the amount payable under the lease and notify the lessee.

### **Clause 316 Application for rent payout lease variation**

This clause provides for a lessee to apply to the Territory Planning Authority to vary their lease by reducing the rent payable to a nominal rent.

### **Clause 317 Decision on rent payout lease variation application**

This clause sets out the process the Territory Planning Authority considers in making a decision to vary a lease by reducing the rent payable to a nominal rent.

The term 'tax' is defined to provide a consistent meaning in this section.

### **Clause 318 Policy directions for paying out rent**

This clause provides for the Minister to make policy directions for section 317 (2) (d).

### **Clause 319 Power to decide rent payout applications deemed refused**

This clause sets out when an application to payout the rent is taken to have deemed refused but despite this, allows the Territory Planning Authority to still decide to vary a lease to reduce the rent payable to a nominal rent.

### **Clause 320 Lease to be varied to pay out rent**

This clause requires the Territory Planning Authority vary a lease in accordance with the decision made under section 317 to reduce the rent payable to a nominal rent.

### **Clause 321 No variations to extend term**

This clause prevents the Territory Planning Authority from executing a variation of a lease to extend the term of a lease.

### **Clause 322 No variation of certain leases for 5 years**

This clause sets out when the Territory Planning Authority must not approve a variation of a lease within a specified time on certain leases except where the variation would not limit, add or remove an authorised use of the land.

The term 'authorised use' is defined to provide a consistent meaning in this section.

## **Division 10.7.3 Variation of nominal rent leases**

### **Subdivision 10.7.3.1 Preliminary**

#### **Clause 323 Definitions—div 10.7.3**

This clause defines the terms 'chargeable variation', 'non-standard chargeable variation', 'original decision', 'reconsideration application', 'standard

chargeable variation' and 'working out statement' to provide a consistent meaning in this division.

The term 'gross floor area' has the same meaning as defined in the Territory Plan as in this division.

### **Subdivision 10.7.3.2 Chargeable variations of nominal rent leases**

#### **Clause 324 Lease variation charge payable for chargeable variation**

This clause sets out when the Territory Planning Authority must not execute a chargeable variation of a nominal rent lease and when a lease variation charge is taken to be paid to the Territory.

The term 'total lease variation charge' is defined to provide a consistent meaning in this section.

#### **Clause 325 Notice of assessment**

This clause requires the Commissioner for Revenue to provide a notice of assessment of the lease variation charge on the approval of a development application for a chargeable variation of a nominal rent lease to the lessee or applicant of the application.

#### **Clause 326 More than 1 chargeable variation**

This clause sets out how the lease variation charge is worked out when there are more than 1 chargeable variations in a development approval of a nominal rent lease.

#### **Clause 327 Standard chargeable variations**

This clause sets out how the lease variation charge for a standard chargeable variation of a nominal rent lease is determined by the Treasurer.

#### **Clause 328 Non-standard chargeable variations**

This clause provides the formula used by the Commissioner for Revenue to work out the lease variation charge for a non-standard chargeable variation of a nominal rent lease.

#### **Clause 329 Non-standard chargeable variations—improvements**

This clause explains that an improvement in a lease must not be taken into account in the workings out of  $V_1$  and  $V_2$  under section 328 except where the improvement is existing and by way of clearing, filling, grading, draining, levelling or excavating the land.

The term 'improvement' is defined to provide a consistent meaning in this section.

The term 'remediation' has the same meaning as defined in the *Environment Protection Act 1997* dictionary as in this section.

### **Clause 330 Non-standard chargeable variations—working out statement**

This clause sets out when an applicant of an approved development application relating to a non-standard chargeable variation of a nominal rent lease, can ask the Commissioner for Revenue for a working out statement explaining the Commissioner's working out in relation to the lease variation charge in the decision.

### **Clause 331 Non-standard chargeable variations—application for reconsideration**

This clause sets out when an applicant or the Lessee of an approved development application relating to a non-standard chargeable variation of a nominal rent lease, can apply for reconsideration of the decision. This section does not apply to a reassessment of a lease variation charge under section 336.

### **Clause 332 Non-standard chargeable variations—requirements for reconsideration application**

This clause sets out what information is required to be submitted when lodging a reconsideration application by the lessee and/or applicant of a development approval relating to a non-standard chargeable variation of a nominal rent lease.

### **Clause 333 Non-standard chargeable variations—reconsideration**

This clause sets out what the Commissioner for Revenue must consider when a reconsideration application is received on an approved development application relating a non-standard chargeable variation of a nominal rent lease.

### **Clause 334 Reduction of lease variation charges**

This clause allows the Minister to determine circumstances in which the amount of lease variation charge can be reduced, however, the responsibility to determine the amount by which the lease variation charge is reduced by sits with the Treasurer. The amount must be expressed as a percentage.

### **Clause 335 Increase of lease variation charge**

This clause states that where lease variation charge of a nominal rent lease is prescribed by regulation, the chargeable variation must be increased to that amount.

### **Clause 336 Lease variation charge—reassessment**

This clause sets out when the Commissioner for Revenue can reassess a chargeable variation of a nominal lease under the *Taxation Administration Act 1999*, section 9 (Reassessment).

### **Clause 337 Taxation Administration Act—disclosure of information**

This clause allows a tax officer, under division 9.4 (Secrecy) of the *Taxation Administration Act 1999*, to disclose information obtained in relation to division 10.7.3 to the Territory Planning Authority.

### **Subdivision 10.7.3.3 Deferring lease variation charges**

#### **Clause 338 Application to defer payment of lease variation charges**

This clause allows the lessee, for a development application for a chargeable variation of a nominal rent lease, to apply to the Commissioner for Revenue to defer the time to pay the lease variation charge.

#### **Clause 339 Approval to defer payment of lease variation charges**

This clause provides for the Commissioner for Revenue to approve an application to defer the payment of a lease variation charge subject to a number of conditions being met and a deferral arrangement being entered into.

The term 'total lease variation charge' is defined to provide a consistent meaning in this section.

#### **Clause 340 Conditions of deferral arrangement**

This clause sets out the requirements of the deferral arrangement when required to be entered into where the Commissioner for Revenue approves the deferral of the payment of a lease variation charge.

#### **Clause 341 Lease variation charge changed after reconsideration etc**

This clause applies if a new amount of lease variation charge differs from the amount payable when the deferral arrangement was entered into due to either a reconsideration, reassessment or review under this Act or the *Taxation Administration Act 1999*. The deferral arrangement applies to the new amount.

#### **Clause 342 Certificate of lease variation charge and other amounts**

This clause provides for the Commissioner for Revenue to issue a certificate to a relevant person setting out any unpaid lease variation charge, interest and penalty tax still required to be paid as conclusive proof for an honest buyer of the value of the matters certified.

The term 'relevant person' is defined to provide a consistent meaning in this section.

## **Part 10.8 Rural leases**

### **Division 10.8.1 Further rural leases**

#### **Clause 343 Amount payable for further leases—rural land**

This clause provides for the Minister to make a determination setting out the payment requirements for the grant of rural leases.

#### **Clause 344 Term of further leases—rural land**

This clause provides for the Minister to make a determination setting out the maximum term rural leases can be granted for provided these terms do not

exceed the maximum term set by the National Capital Authority for rural land in a designated area.

## **Division 10.8.2 – Exceptions for rural leases**

### **Clause 345 Definitions—div 10.8.2**

This clause defines the terms ‘discharge amount’ and ‘holding period’ to provide a consistent meaning in this division.

### **Clause 346 Land management agreements**

This clause sets out when a land management agreement is required for a rural lease, while the Conservator of Flora and Fauna can make guidelines setting out what is required to be included in land management agreements.

### **Clause 347 Dealings with rural leases**

This clause explains that a lessee, or anyone else with an interest in a rural lease, must not undertake any dealings on the lease without the written approval of the Territory Planning Authority. The Authority must make a decision on the dealing taking into account a number of factors.

The term ‘child’ is defined to provide a consistent meaning in this section.

### **Clause 348 Exceptions to s 346 and s 347**

This clause sets out the circumstances when certain dealings on rural lease do not apply.

### **Clause 349 Delayed requirement to enter into land management agreement**

This clause requires a new interest holder in a rural lease to enter into a land management agreement within a specific period if they have not already entered into one.

### **Clause 350 Certain dealings in holding period**

This clause sets out the types of dealings the Territory Planning Authority can and cannot do during the holding period of a rural lease.

## **Part 10.9 Leases—improvements**

### **Clause 351 Application—pt 10.9**

This clause explains that this part applies to improvements and sets out which improvements are covered.

### **Clause 352 Definitions—pt 10.9**

This clause defines the terms ‘improvement’, ‘lessee’ and ‘undertaken’ to provide a consistent meaning in this part.



### **Clause 353 Renewing lessee not liable to pay for improvements**

This clause explains that a lessee is not liable to pay the Territory Planning Authority for improvements on the land on a further lease being granted.

### **Clause 354 Authority must pay for certain improvements**

This clause requires the Territory Planning Authority to pay the lessee the value of the improvements on the land where the lessee is not granted a further lease.

### **Clause 355 Land declared available for further lease**

This clause provides for the Territory Planning Authority to deduct, from the amount paid to the lessee under section 354, the amount of any expenditure reasonably incurred due to the regranting of a lease to someone other than lessee.

### **Clause 356 Lease surrendered or terminated**

This clause requires the Territory Planning Authority to pay the lessee the value of improvements on the land where the lease is surrendered or terminated, the lessee has fully complied with the lease and there is no provision in the lease that excludes or limits the right to pay for the improvements. The Authority must deduct from the amount to be paid to the lessee under section 354, the amount of expenditure reasonably incurred due to the surrender or terminated lease.

### **Clause 357 Withdrawal of lease or part before end**

This clause requires the Territory Planning Authority to pay the lessee the value of improvements on the land where the Authority withdraws land from the lease subject to certain conditions being satisfied.

### **Clause 358 Deciding value of improvements**

This clause requires the Territory Planning Authority to decide the market value of the improvements where compensation is payable.

The terms 'assessment day' and 'market value' are defined to provide a consistent meaning in this section.

## **Part 10.10 Surrendering and termination of leases**

### **Clause 359 Lessee may surrender lease**

This clause allows the lessee at any time, with the approval of the Territory Planning Authority surrender their lease.

### **Clause 360 Refund on lease surrender or termination**

This clause provides for the Territory Planning Authority, on application by a person whose lease has been surrendered or terminated, to pay the person the amount prescribed by regulation.

## **Part 10.11 Declared subleases of land**

### **Clause 361 Meaning of declared land sublease**

This clause defines 'declared land sublease' to provide a consistent meaning in this Act.

The term 'declared lease' is defined to provide a consistent meaning in this section.

### **Clause 362 Declared leases**

This clause sets out what the Minister and another Minister must consider to be satisfied that a declared lease is in the public interest.

The term 'prescribed lease' is defined to provide a consistent meaning in this section.

## **Part 10.12 Leases—building and development provisions**

### **Division 10.12.1 Preliminary**

#### **Clause 363 Definitions—pt 10.12**

This clause defines the terms 'lease' and 'transfer' to provide a consistent meaning in this part.

### **Division 10.12.2 Certificates of compliance**

#### **Clause 364 Certificates of compliance**

This clause provides the Territory Planning Authority to issue a certificate of compliance where the building and development provisions in the lease have been complied with.

#### **Clause 365 Certificates of compliance—Unit Titles Act leases**

This clause requires the Territory Planning Authority to be satisfied when issuing a certificate of compliance for the building and development provisions in a lease under the *Unit Titles act 2001*.

### **Division 10.12.3 Building and development provisions—transfer of land**

#### **Clause 366 Transfer of land subject to building and development provision**

This clause explains when a lease containing a building and development provision in a lease can be transferred.

#### **Clause 367 Transfer of land subject to building and development provision—approval generally**

This clause sets out what the Territory Planning Authority must consider when considering to approve a transfer of a lease containing a building and development provision.

**Clause 368 Transfer of land subject to building and development provision—approval for first sale**

This clause provides the Territory Planning Authority to approve a transfer of a lease containing a building and development provision where the transfer is the first sale of the land by the person who provided the infrastructure on the land.

**Clause 369 Transfer of land subject to building and development provision—considerations for approval**

This clause requires the Territory Planning Authority take into consideration any matter prescribed by regulation when considering to approve a transfer of a lease containing a building and development provision.

**Division 10.12.4 Noncompliance with building and development provision**

**Clause 370 Fee for noncompliance with building and development provision**

This clause requires a noncompliance fee to be paid to the Territory Planning Authority by the lessee for each period, works remain incomplete under their lease that includes a building and development provision which has not been complied with. The Authority is responsible for providing written advice to the lessee at the end of each period.

**Clause 371 Authority may give notice of new compliance time**

This clause allows the Territory Planning Authority to set a new compliance time for when the works required under the building and development provision in a lease are to be completed, in a written notice to the lessee.

**Part 10.13 Licences for unleased land**

**Clause 372 Criteria for granting licences for unleased land**

This clause provides for the Executive to determine criteria for the granting of licences to occupy or use unleased land.

**Clause 373 Applications for licences for unleased land**

This clause allows a person to apply to the Territory Planning Authority for a licence to occupy or use an area of unleased land.

**Clause 374 Decision on licence applications for unleased land**

This clause provides the Territory Planning Authority to grant a licence to occupy or use unleased land or any building or other structure on the land provided the Conservator of Flora and Fauna has agreed in writing.

**Clause 375 Licences—form etc**

This clause prescribes the information to be included in a granted licence.

### **Clause 376 Licences—when not needed**

This clause sets out when a licence does not need to be granted to occupy or use an area of unleased land.

## **Part 10.14 Leases and licences—miscellaneous**

### **Clause 377 Reservation of minerals**

This clause provides a list of minerals, and explains that a reservation of minerals in a lease is a reservation of all minerals and mineral substances in or on the land.

### **Clause 378 How land may be recovered if former lessee or licensee in possession**

This clause allows, under certain circumstances, the Territory Planning Authority to demand an unlawful occupier to give up possession of land and sets out the measures to take where the demand is not complied with.

The term ‘licence’ is defined to provide a consistent meaning in this section.

### **Clause 379 Conversion of Commonwealth leases**

This clause sets out where certain leases have been granted under other repealed or amended legislation, the lease is taken to be granted under this Act.

The term ‘prescribed law’ is defined to provide a consistent meaning in this section.

## **Chapter 11 Public land**

Chapter 11 sets out how public land in the Territory is to be managed. Public land can be reserved for certain purposes such as nature reserves, urban open space or sport and recreation reserves and is maintained in accordance with a public land management and management objectives. The provisions of the 2007 Act are fit for purpose in enabling appropriate oversight and reviews in the management of public land and have been retained in this Act.

### **Part 11.1 Management of public land**

#### **Clause 380 Recommendations to authority about public land**

This clause provides for the custodian of an area of unleased land to recommend to the Territory Planning Authority to amend the Territory Plan to either designate the area as public land or amend an area already designated.

#### **Clause 381 Reserved areas of public land**

This clause lists the types of public land that may be reserved in the Territory Plan.

### **Clause 382 Management of public land**

This clause explains the custodian of an area of public land must manage the land in accordance with the management objectives applying to the area and the public land management plan for the area.

### **Clause 383 Management objectives for public land**

This clause sets out the management objectives for an area of public land determined by the Conservator of Flora and Fauna.

## **Part 11.2 Management plans for public land**

### **Division 11.2.1 Public land management plans**

#### **Clause 384 Meaning of public land management plan**

This clause defines the term ‘public land management plan’ to provide a consistent meaning in this Act.

The terms ‘reserve’ and ‘reserve management plan’ have the same meaning as defined in the *Nature Conservation Act 2014* section 169 and section 175 respectively as in this section.

### **Division 11.2.2 Land management plans**

#### **Clause 385 Draft land management plan—custodian to prepare**

This clause requires the custodian of an area of public land to prepare a draft land management plan and consult with the Conservator of Flora and Fauna, the Territory Planning Authority and the Environment Protection Authority.

#### **Clause 386 Draft land management plan—public consultation**

This clause sets out the requirements of publishing a consultation notice about the draft land management plan by the custodian of an area of public land.

#### **Clause 387 Draft land management plan—revision and submission to Minister**

This clause provides the Territory Planning Authority to revise the draft major plan amendment taking into account written submissions received during the consultation period and submit the draft plan to the Minister for approval.

#### **Clause 388 Draft land management plan—referral to Legislative Assembly committee**

This clause sets out the requirements of referring a draft land management plan to the relevant Legislative Assembly committee.

#### **Clause 389 Draft land management plan—committee to report**

This clause requires the Minister to take certain action on a draft land management plan where the draft plan was referred to the relevant Legislative Assembly committee.

### **Clause 390 Draft land management plan – Minister to approve, return or reject**

This clause sets out the requirements for the Minister to make a decision on a draft land management plan.

The term ‘required time’ is defined to provide a consistent meaning in this section.

### **Clause 391 Land management plan—effect of Minister’s approval**

This clause explains that a draft land management plan approved by the Minister is a land management plan.

### **Clause 392 Draft land management plan—return to custodian**

This clause provides for the Minister to return the draft land management plan to the custodian to give effect to directions and resubmit to the Minister for approval.

### **Clause 393 Draft land management plan—rejection by Minister**

This clause provides the Minister to prepare a rejection notice where the Minister has rejected a draft land management plan.

### **Clause 394 Land management plan—minor amendments**

This clause allows the custodian to make minor amendments to a land management plan that is in force and submit to the Minister for a decision.

The term ‘minor amendment’ is defined to provide a consistent meaning in this section.

### **Clause 395 Land management plan—custodian to implement**

This clause requires the custodian to implement a land management plan that is in force for an area of public land.

### **Clause 396 Land management plan—review**

This clause sets out the requirements of the custodian to revise a land management plan that is in force.

## **Part 11.3 Public land—leases and miners’ rights**

### **Clause 397 Leases of public land**

This clause allows the Territory Planning Authority to grant a lease over an area of public land but only where conditions have been met.

The terms ‘defined period’ and ‘future public land’ are defined to provide a consistent meaning in this section.

### **Clause 398 Miners’ rights in relation to public land**

This clause states that a miner’s right must not be granted in relation to public land.

## **Chapter 12 Development offences and controlled activities**

Chapter 12 includes a range of measures to investigate complaints and take action on controlled activities identified in Schedule 5. The 2007 Act contains a series of offences, predominantly in relation to development. The substance of these offence provisions remains unchanged. However, the offence provisions relating to development have been moved into this chapter along with controlled activities. The move makes these offences clearly identifiable and results in the provisions being located close to the compliance and enforcement powers under this Act.

The compliance powers available to the Planning and Land Authority under the 2007 Act are generally fit for purpose and comprehensive. This Act has largely retained those provisions and processes, but an effort has been made to simplify processes and express them in a way that is easier to understand.

### **Part 12.1 Development offences**

#### **Clause 399 Offence to develop without approval**

This clause sets out that it is an offence for a person to undertake a development without approval and where approval is required and the person either knows the development requires approval or is reckless or negligent about whether the development requires approval.

The clause provides that it is a strict liability offence for a person to undertake development without development approval where the development requires development approval.

#### **Clause 400 Offence to undertake prohibited development**

This clause sets out that it is an offence for a person to undertake a development and the development is prohibited and the person either knows the development is prohibited or is reckless or negligent about whether the development is prohibited.

The clause provides that it is a strict liability offence for a person to undertake development without development approval and the development is prohibited.

#### **Clause 401 Development authorised by approval before prohibition**

This clause states that it is not an offence where a person undertakes development, is given approval for the development but then the development becomes prohibited.

#### **Clause 402 Offence to develop other than in accordance with approval**

This clause sets out that it is an offence for a person to undertake a development and the development contravenes the approval given for that development. This is also a strict liability offence.

### **Clause 403 Development previously exempt–non-use**

This clause states that a development is lawful where the development was exempt from approval (other than a development that is a use), work began on the development and the development stops being exempt due to an amendment of this Act.

### **Clause 404 Development previously exempt–use**

This clause sets out when the use of land, or building or other structure is lawful taking into consideration a number of factors and when the use of land, or building or other structure should not be taken as being lawful as provided for in this section.

The term ‘relevant authorisation’ is defined to provide a consistent meaning in this section.

### **Clause 405 Development that becomes exempt**

This clause applies where a development has been undertaken with no approval but required approval and the development becomes an exempt development. The development is taken to be exempt.

### **Clause 406 Victimisation**

This clause sets out an offence has been committed where a person causes or threatens to cause a detriment to another person or intimidates another person in relation to complaint under this Act.

## **Part 12.2 Complaints about controlled activities**

### **Clause 407 Meaning of complainant–pt 12.2**

This clause defines the term ‘complainant’ to provide a consistent meaning in this part.

### **Clause 408 Meaning of controlled activity**

This clause defines the term ‘controlled activity’ to provide a consistent meaning in this Act.

### **Clause 409 Complaints about controlled activities**

This clause allows anyone who believes a person was, is or will be undertaking a controlled activity to complain to the Territory Planning Authority.

### **Clause 410 Form of complaints**

This clause prescribes the information to be included in the complaint form.

### **Clause 411 Withdrawal of complaints**

This clause allows a complainant to withdraw their complaint at any time by written notice to the Territory Planning Authority, however the Authority may continue to act on the complaint if it considers it appropriate to do so.



#### **Clause 412 Additional information about complaints**

This clause allows the Territory Planning Authority to require a complainant to provide additional information about their complaint.

#### **Clause 413 Investigation of complaints**

This clause requires the Territory Planning Authority to take reasonable steps in investigating each complaint made in accordance with section 410.

#### **Clause 414 Use of information relating to complaints**

This clause allows the Territory Planning Authority to use information in a complaint, or information found during the investigation of a complaint, in deciding whether to take any action under this chapter.

#### **Clause 415 Action after investigating complaints**

This clause provides a list of actions that the Territory Planning Authority must do at least 1 of after investigating a complaint made under this part.

The terms 'construction occupations licensee', 'ground for occupational discipline' and 'rectification work' are defined to provide a consistent meaning in this section.

#### **Clause 416 Guidelines for taking action on complaints**

This clause provides the Territory Planning Authority to make guidelines about the action that may be taken in relation to complaints under this part.

#### **Clause 417 No further action on complaints under s 414 (1) (a)**

This clause allows the Territory Planning Authority, in considering whether any further action is required in relation to a complaint, to consider the standing of the complaint.

#### **Clause 418 Referral of complaints under s 414 (1) (b)**

This clause allows the Territory Planning Authority to refer a complaint to another entity where it is considered more appropriate for the entity to deal with the complaint rather than the Authority.

### **Part 12.3 Controlled activity orders**

#### **Clause 419 Definitions—pt 12.3**

This clause defines the terms 'complainant', 'ongoing controlled activity order' and 'show cause notice' to provide a consistent meaning in this part.

#### **Clause 420 Controlled activity orders**

This clause allows the Territory Planning Authority to make a controlled activity order.

#### **Clause 421 Notice of intention to make controlled activity order**

This clause requires the Territory Planning Authority to provide a show cause notice, where the Authority proposes to make a controlled activity order, to each person to whom the order will be directed too.

This clause sets out the process and the information to be included in the show cause notice.

#### **Clause 422 Time for making controlled activity order**

This clause states that where the Territory Planning Authority, after providing a show cause notice, fails to make a controlled activity order within the prescribed time, unless extended by the Chief Planner, the Authority must provide a new show cause notice before making the order.

#### **Clause 423 Decision on proposed controlled activity order**

This clause sets out the requirements the Territory Planning Authority must consider before deciding to make a controlled activity order.

#### **Clause 424 Ongoing controlled activity orders**

This clause sets out the requirements the Territory Planning Authority to consider in making an ongoing controlled activity order.

#### **Clause 425 Content of controlled activity orders**

This clause prescribes the information to be included in the controlled activity order and sets out the actions to be carried out by the person the order is directed at.

#### **Clause 426 Notice of making of controlled activity orders**

This clause lists to whom the Territory Planning Authority must provide a notice to advising them of the making of the controlled activity.

The term 'protected tree' has the same meaning as defined in the *Tree Protection Act 2005* section 8 as in this section.

#### **Clause 427 Who is bound by a controlled activity order**

This clause states that a controlled activity order binds each person to whom it is directed.

#### **Clause 428 Contravention of controlled activity orders**

This clause sets out that an offence has been committed where a person contravenes a controlled activity order directed at that person. This is also a strict liability offence.

#### **Clause 429 Notice of appeal against controlled activity orders**

This clause requires the Territory Planning Authority to advise the person who made a complaint about a controlled activity which resulted in the Authority

making a controlled activity order, where the person directed in the order has appealed to the ACAT for a review of the decision to make the order.

#### **Clause 430 Ending controlled activity orders**

This clause states that a controlled activity order operates until it is revoked or ends in accordance with the order. However a person bound by an order may apply to the Territory Planning Authority for the revocation of the order. The Authority may revoke the order if satisfied on reasonable grounds the order is no longer necessary or appropriate.

#### **Clause 431 Notice ending controlled activity orders**

This clause sets out to whom the Territory Planning Authority must notify where a controlled activity order either ends other than by being revoked or revoked by the Authority.

### **Part 12.4 Rectification work**

#### **Division 12.4.1 Preliminary**

##### **Clause 432 Meaning of rectification work**

This clause defines the term 'rectification work' to provide a consistent meaning in this Act.

#### **Division 12.4.2 Directions for rectification work**

##### **Clause 433 Direction to undertake rectification work**

This clause allows the Territory Planning Authority, under a notice, to direct a person to undertake rectification work in relation to a controlled activity.

##### **Clause 434 Contravention of direction to undertake rectification work**

This clause sets out an offence has been committed where a person contravenes a direction given by the Territory Planning Authority. This is also a strict liability offence.

#### **Division 12.4.3 Authorisations for rectification work**

##### **Clause 435 Authorisation to undertake rectification work**

This clause allows the Territory Planning Authority, where work under a direction has not been completed in the time specified, to authorise a person to enter the premises and complete the work.

##### **Clause 436 Obligation and powers of authorised people**

This clause sets out that an authorised person must undertake the rectification work in accordance with the directions of an inspector and may do anything required to undertake the rectification work.

### **Clause 437 Entry to premises by authorised people**

This clause sets out when an authorised person may enter the premises to undertake the rectification work.

## **Division 12.4.4 Rectification work orders**

### **Clause 438 Application for rectification work order**

This clause sets out when an inspector needs to apply to a magistrate for a rectification work order authorising entry to the premises to undertake the rectification work.

### **Clause 439 Decision on application for rectification work order**

This clause allows the magistrate, once satisfied, to consider making a decision on a rectification work order.

### **Clause 440 Content of rectification work order**

This clause prescribes the information to be included in a rectification work order.

### **Clause 441 Authorisation by rectification work order**

This clause lists the authorisations authorised under a rectification work order.

### **Clause 442 Remote application for rectification work order**

This clause sets out how an inspector can apply for a remote application for a rectification work order where the inspector is already on the premises but consent for the inspector to enter the premises has been withdrawn.

### **Clause 443 Documents given after order made on remote application**

This clause sets out the requirements for a magistrate and the inspector to follow once the magistrate makes a rectification work order on the remote application made by the inspector.

The term 'remote application' is defined to provide a consistent meaning in this section.

### **Clause 444 Entry under rectification work order—no occupier present**

This clause allows an inspector, as authorised by a rectification work order, to enter a premises where it is believed on reasonable grounds no occupier is present on the premises and use reasonable force. Reasonable force may only be used by inspectors against property and not a person.

### **Clause 445 Entry under rectification work order—occupier present**

This clause sets out, where an occupier is present on the premises, the requirements an inspector must follow in order to enter the premises as authorised by a rectification work order and use reasonable force. Reasonable force may only be used by inspectors against property and not a person.

## **Division 12.4.5 Liability for rectification work**

### **Clause 446 Liability for cost of rectification work**

This clause requires a person to comply with a direction under section 433 to pay the Territory the reasonable cost of any rectification work undertaken by an authorised person to which the direction related.

### **Clause 447 Protection of authorised people from liability**

This clause provides that an authorised person does not incur civil liability for rectification work undertaken in accordance with the directions of an inspector and apart from this section, a civil liability that would attach to the authorised person attaches instead to the Territory.

## **Part 12.5 Prohibition notices**

### **Clause 448 Giving prohibition notices**

This clause allows the Territory Planning Authority, where it believes on reasonable grounds it is necessary, to give a prohibition notice. The information to be included in a prohibition notice is also provided for in this section.

### **Clause 449 Contravention of prohibition notices**

This clause sets out an offence has been committed where a person either carries on with an activity in relation to the premises where a prohibition notice has been given by the Territory Planning Authority or carries on with the activity in relation to the premises otherwise than in accordance with the notice. This is also a strict liability offence.

### **Clause 450 Ending prohibition notices**

This clause provides that a prohibition notice remains in force until earlier of the date the notice ends in accordance with the notice or the date the notice is revoked.

### **Clause 451 Application for revocation of prohibition notices**

This clause allows a person to whom a prohibition notice is directed to apply to the Territory Planning Authority for the revocation of the notice. The Authority may revoke the notice if satisfied on reasonable grounds that the notice is no longer necessary or appropriate.

## **Part 12.6 Injunctions and termination of leases and licences**

### **Clause 452 Injunctions to restrain contravention of controlled activity orders and prohibition notices**

This clause provides the Territory Planning Authority or anyone else to apply to the Supreme Court for an injunction where a relevant person has or is or proposes to engage in conduct contravening a controlled activity order or prohibition notice. The Supreme Court, if satisfied, may grant the injunction.

### **Clause 453 Termination of leases**

This clause provides the Territory Planning Authority, under certain circumstances, to give a lessee a termination notice terminating their lease.

The term 'compliance reminder notice' is defined to provide a consistent meaning in this section.

### **Clause 454 Termination of licences**

This clause provides the Territory Planning Authority, under certain circumstances, to give a licensee written notice terminating their licence.

### **Clause 455 Notice of termination**

This clause requires the Territory Planning Authority to not terminate a lease or licence unless it has satisfied a number of conditions.

## **Chapter 13 Enforcement**

Chapter 13 sets out the enforcement procedures to be undertaken and provides for the appointment of inspectors and their powers of entry; the Territory Planning Authority's power to require information, seizure, forfeiture and return seized items, search warrants and monitoring warrants; and rectification orders. The provisions of the 2007 Act are fit for purpose in supporting compliance and enforcement action and have been retained in this Act.

### **Part 13.1 Preliminary**

#### **Clause 456 Definitions—ch 13**

This clause defines the terms 'connected', 'occupier' and 'offence' to provide a consistent meaning in this chapter.

### **Part 13.2 Inspectors**

#### **Clause 457 Appointment of inspectors**

This clause provides the Territory Planning Authority to appoint a public servant as an inspector for this Act.

#### **Clause 458 Identity cards**

This clause card prescribes the information to be included in an identity card which is required to be given to an inspector by the Territory Planning Authority.

An offence has been committed where a person stops being an inspector and does not return their identity card to the Authority. This is also a strict liability offence.

## **Part 13.3 Powers of inspectors**

### **Clause 459 Entry to premises**

This clause sets out when an inspector may enter a premises.

### **Clause 460 Remaining at premises**

This clause provides that an inspector must not remain at an entered premises under this part, if the inspector does not show their identity card when asked by the occupier.

### **Clause 461 Consent to entry without authorised person**

This clause sets out the obligations for an inspector, occupier, and the court where an inspector enters a premises with the consent of the occupier but without an authorised person.

### **Clause 462 Consent to entry with authorised person**

This clause sets out the obligations for an inspector, occupier, and the court where an inspector enters a premises with the consent of the occupier and with an authorised person.

### **Clause 463 Entry on notice for rectification work and monitoring**

This clause applies where the Territory Planning Authority gives an occupier of a premises an intention to enter notice where an inspector is proposing to enter their premises for a particular offence under this Act. The information to be included in the intention to enter notice, the requirements for inspectors and the occupier, and the timeframes to provide the notice is provided for in this section.

### **Clause 464 General powers on entry to premises**

This clause provides a list of exercises an inspector may do at least 1 of when entering a premises under this chapter provided the inspector believes on reasonable grounds that the exercise relates to particular offence under this Act.

### **Clause 465 Power on entry for rectification work**

This clause provides that an inspector who enters a premises under section 459 may give directions to the authorised person undertaking the rectification work about how the work is to be carried out.

### **Clause 466 Power to require help on entry under warrant**

This clause sets out that a person commits an offence where that person fails to give an inspector who enters the premises under a search or monitoring warrant reasonable help to exercise a power under this chapter.

#### **Clause 467 Power to take samples on entry under warrant**

This clause sets out how an inspector, on reasonable grounds believed by the inspector, can take samples under a search or monitoring warrant connected with the matter to which the warrant relates.

#### **Clause 468 Power to seize things on entry under search warrant**

This clause provides that an inspector who enters a premises under a search warrant may seize anything at the premises that the inspector is authorised to seize under the warrant.

#### **Clause 469 Power to require name and address**

This clause sets out the requirements for an inspector to require a person to state the person's name and home address if the inspector believes on reasonable grounds that the person is committing or has just committed an offence against this Act. An offence against this section is a strict liability offence.

### **Part 13.4 Information requirements**

#### **Clause 470 Information requirements**

This clause provides the Territory Planning Authority, if it suspects on reasonable grounds that a person has information required by the Authority in relation to the administration or enforcement of this Act, to give that person an information requirement notice requiring the information or to produce the document. A person commits an offence if the person intentionally contravenes a requirement of the notice. A person does not incur any civil or criminal liability because the person gives the information to the Authority.

#### **Clause 471 Treatment of documents provided under information requirement**

This clause requires the Territory Planning Authority to return all information produced in accordance with an information requirement notice. However, the Authority may make copies of, or take extracts from, the information.

#### **Clause 472 When authority may ask for information from commissioner for revenue**

This clause allows the Territory Planning Authority to seek a person's contact details from the Commissioner for Revenue where the Authority needs to contact a person who is considered as an uncontactable person. The Commissioner must disclose the information to the Authority on request.

The term 'uncontactable person' is defined to provide a consistent meaning in this section.

#### **Clause 473 When authority may ask for information about leases from commissioner for revenue**

This clause allows the Territory Planning Authority to ask the Commissioner for Revenue for the contact details of a person in relation to lease however,



only 1 request per month is permitted or longer if prescribed by regulation. The Commissioner must disclose the information to the Authority on request.

## **Part 13.5 Search warrants**

### **Clause 474 Application for search warrant**

This clause prescribes the information to be included in a warrant, to be issued by the Magistrate, if satisfied there are reasonable grounds for suspecting an offence is being carried out to enable an inspector to enter the premises.

### **Clause 475 Remote application for search warrant**

This clause sets out how an inspector can apply for a warrant other than in person because the inspector considers it necessary because of urgent or other special circumstances.

### **Clause 476 Documents given after warrant issued on remote application**

This clause sets out the process required of a magistrate and the inspector to follow once the magistrate has issued a search warrant on the remote application made by the inspector authorising the inspector to enter the premises and exercise the powers under this chapter.

The term 'remote application' is defined to provide a consistent meaning in this section.

### **Clause 477 Search warrants—announcement before entry**

This clause sets out the requirements an inspector must carry out before entering a premises under a search warrant.

### **Clause 478 Details of search warrant must be given to occupier**

This clause requires an inspector to provide the relevant documents pertaining to a search warrant to the occupier or someone representing the occupier of the premises while the warrant is being executed.

### **Clause 479 Occupier may be present during search**

This clause allows the occupier or someone representing the occupier of the premises if present while the search warrant is being executed to observe the search being conducted unless the person is not entitled to observe the search.

## **Part 13.6 Monitoring warrants**

### **Clause 480 Application for monitoring warrant**

This clause sets out when an inspector may apply to a magistrate for a monitoring warrant in relation to a premises.

### **Clause 481 Decision on application for monitoring warrant**

This clause sets out when a magistrate may issue a monitoring warrant.

### **Clause 482 Content of monitoring warrant**

This clause prescribes the information to be included in a monitoring warrant.

### **Clause 483 Authorisation by monitoring warrant**

This clause allows an inspector, as authorised by a monitoring warrant, to enter a premises and use reasonable force. Reasonable force may only be used by inspectors against property and not a person.

### **Clause 484 Remote application for monitoring warrant**

This clause sets out how an inspector can apply for a monitoring warrant where the inspector is already on the premises but consent for the inspector to enter the premises has been withdrawn.

### **Clause 485 Documents given after warrant issued on remote application**

This clause sets out the requirements for a magistrate and the inspector to follow once the magistrate issues a monitoring warrant on the remote application made by the inspector.

The term 'remote application' is defined to provide a consistent meaning in this section.

### **Clause 486 Entry under monitoring warrant—no occupier present**

This clause allows an inspector, as authorised by a monitoring warrant, to enter a premises using reasonable force where it is believed on reasonable grounds no occupier is present on the premises. Reasonable force may only be used by inspectors against property and not a person.

### **Clause 487 Entry under monitoring warrant—occupier present**

This clause sets out, where an occupier is present on the premises, the requirements an inspector must follow in order to enter the premises as authorised by the monitoring warrant and use reasonable force. Reasonable force may only be used by inspectors against property and not a person.

## **Part 13.7 Return and forfeiture of things seized**

### **Clause 488 Receipt for thing seized**

This clause requires an inspector to provide a receipt for a thing seized under this chapter to the person it was seized from.

### **Clause 489 Moving thing to another place for examination or processing under search warrant**

This clause sets out the process for when a thing is found at a premises, it may be moved to another place for examination or processing to decide

whether it should be seized under the warrant provided certain conditions are satisfied.

#### **Clause 490 Action in relation to seized thing**

This clause sets out an offence has been committed by a person who interferes with a thing an inspector has seized under a search warrant without the inspector's approval.

#### **Clause 491 Access to thing seized**

This clause provides that a person who would, apart from the seizure, be entitled to inspect a thing seized under this chapter may inspect it and if it is a document, take extracts from it or make copies of it.

#### **Clause 492 Return of thing seized**

This clause sets out how a thing seized under this chapter is to be returned to the owner or subject to a number of factors, be paid reasonable compensation by the Territory to the owner for the loss of the thing. Anything seized not returned or paid reasonable compensation on is forfeited to the Territory to dispose of as the Chief Planner directs.

## **Chapter 14 Access to information**

Chapter 14 provides the provisions relating to accessing information on the planning system, the keeping of a public register and the contents to be included on the register. This Act retains provisions from the 2007 Act requiring certain development application information and documents on the public register to be publicly available on the Territory Planning Authority's website. This includes details of development applications and the key documents and plans submitted for approval through the development assessment process. These provisions are important elements of the transparency features of this Act.

### **Part 14.1 Public register**

#### **Clause 493 Authority to keep public register**

This clause requires the Territory Planning Authority to keep a public register in any form the Authority considers appropriate.

#### **Clause 494 Contents of public register**

This clause prescribes the information to be included on the public register.

#### **Clause 495 Inspection of public register and associated documents**

This clause requires the Territory Planning Authority to the public register and associated documents are available for public inspection during business hours and allows people inspecting the public register and associated documents to make copies of, or take extracts from, the register and associated documents.

### **Clause 496 Contents of public register on authority website**

This clause prescribes the information required to be published on the Territory Planning Authority website, and how long it must remain published.

### **Clause 497 Meaning of associated document—pt 14.1**

This clause defines the term ‘associated document’ to provide a consistent meaning in this part.

## **Part 14.2 Restrictions on availability of information**

### **Clause 498 Restrictions on information for commercial or safety reasons**

This clause sets out the process for when a person gives a document to the Territory Planning Authority under this Act seeking part of the document to not be made available to the public.

### **Clause 499 Restrictions on information for security reasons**

This clause sets out the process for when the Minister responsible for the administration of justice, or the Commonwealth Attorney-General, certifies in writing to the Territory Planning Authority that the publication of part of a document might jeopardise national security to not publicly release it.

The term ‘security organisation’ is defined to provide a consistent meaning in this section.

## **Chapter 15 Notification and review decisions**

Chapter 15 identifies decisions that are reviewable and decisions that are exempt from third-party review. This Act provides opportunities to seek merits review of decisions made under this Act. The merit’s review is to be undertaken by the ACT Civil and Administrative Tribunal. The Territory’s planning laws need to make provision for procedures for just and timely review, without unnecessary formality, of appropriate classes of decisions on planning, design and development of land. The 2007 Act presently makes such provisions and identifies decisions that are reviewable by ACAT and those that are exempt from third-party appeal. This Act retains these provisions with a simplified statutory framework.

### **Clause 500 Definitions—ch 15**

This clause defines the terms ‘decision-maker’, ‘eligible entity’, ‘interested entity’ and ‘reviewable decision’ to provide a consistent meaning in this chapter.

### **Clause 501 Reviewable decision notices**

This clause sets out who a decision-maker must give a reviewable decision notice to when a reviewable decision is made.

### **Clause 502 Applications for review**

This clause provides that an eligible entity for a reviewable decision may apply to the ACAT for review of the decision.

### **Clause 503 Applications for review by third parties**

This clause sets out the time period allowed for an eligible entity, who was not the applicant for the development application, to lodge an application for review with the ACT Civil and Administrative Tribunal for a reviewable decision.

### **Clause 504 ACAT review—time for making application for deemed decisions**

This clause sets out the time period allowed for an application for review to be lodged with the ACT Civil and Administrative Tribunal for a decision about whether a lease is concessional.

## **Chapter 16 Miscellaneous**

Chapter 16 contains provisions that are important to the effective functioning of the planning system; providing for the making of regulations, the setting of fees, and evidentiary provisions. No policy changes have been proposed to the provisions contained in the Miscellaneous chapter of the 2007 Act. Some of the provisions in that chapter have been relocated to new chapters under this Act, such as the Access to Information chapter. The provisions for the custodianship map has been relocated to this chapter, reflecting their broader purpose identifying land custodians for public land, as well as unleased land.

### **Clause 505 Declaration of authority website**

This clause provides the Minister to declare a website to be the Territory Planning Authority website.

### **Clause 506 Custodianship map**

This clause requires the Territory Planning Authority to create and maintain a custodianship map that identifies and reflects who has administrative responsibility for land in the ACT that is unleased land, public land or both.

### **Clause 507 Damage etc to be minimised**

This clause requires an official exercising an official function to take all reasonable steps to ensure they or any person assisting them, causes as little inconvenience, detriment and damage as practicable. Written notice is required to the owner or left conspicuously at the premises, whichever applies, where damage occurs.

The terms 'function' and 'official' are defined to provide a consistent meaning in this section.

### **Clause 508 Compensation for exercise of enforcement powers**

This clause sets out the process for a person to claim compensation from the Territory where that person has suffered loss or expense as a result of an official person or a person assisting an official person in exercising a function.

The terms 'function' and 'official' are defined to provide a consistent meaning in this section.

### **Clause 509 Enforcement actions unaffected by other approvals etc**

This clause clarifies that the Territory Planning Authority or an official is not prevented from exercising a function where a development approval, a certificate of compliance or a certificate of occupancy has been issued.

The terms 'function' and 'official' are defined to provide a consistent meaning in this section.

### **Clause 510 Evidentiary certificates—offsets register**

This clause provides the Territory Planning Authority to give a signed certificate stating that on a date or during a period an area of land was or was not the subject of an offset. This certificate is taken to be evidence of the matter.

### **Clause 511 Evidence of ending of lease**

This clause provides the Territory Planning Authority to certify in writing that a lease mentioned in the certificate has ended. This certificate is taken to be evidence of the matter.

### **Clause 512 Basic fences between leased and unleased land**

This clause explains where the erection of a basic paling fence is a development requirement between open space and a block boundary, has been complied with if another type of fence has been erected.

The terms 'basic paling fence', 'development requirement' and 'open space boundary' are defined to provide a consistent meaning in this section.

### **Clause 513 Rights to extract minerals**

This clause allows the Territory Planning Authority to grant a person the right to extract minerals from stated land under a lease or licence arrangement agreed too between the parties.

The term 'personal property' has the same meaning as defined in the *Personal Property Securities Act 2009* (Cwlth) section 10 as in this section.

### **Clause 514 Use and disclosure of protected information**

This clause sets out an offence has been committed where an information holder has used, been reckless and/or disclosed protected information including about someone else unless it is necessary to do so for this Act or another law applying in the ACT.

The terms ‘court’, ‘disclose’, ‘information’, ‘information holder’, ‘produce’, ‘protected information’ and ‘use’ are defined to provide a consistent meaning in this section.

#### **Clause 515 Ministerial guidelines**

This clause provides that the Minister may approve guidelines for the exercise of any power by the Minister under this Act.

#### **Clause 516 Construction of outdated references**

This clause explains that where an instrument or document reference to a repealed Act or to a provision of a repealed Act, the instrument or document is taken to be referenced to in this Act, if the context allows and if otherwise appropriate.

The term ‘repealed Act’ is defined to provide a consistent meaning in this section.

#### **Clause 517 Expiry of University of NSW lease provisions**

This clause lists parts in this Act which will expire if a lease is not granted within five years of this Act commencing. Should the University of NSW decide not to proceed with establishing an ACT campus, this sunset clause is desirable to keep the legislation uncluttered and up-to-date.

#### **Clause 518 Determination of fees**

This clause allows the Minister to determine fees for this Act.

#### **Clause 519 Regulation-making power**

This clause allows the Executive to make regulations for this Act.

The term ‘instrument’ is defined to provide a consistent meaning in this section.

## **Chapter 20 Transitional**

As a result of the repeal of the *Planning and Development Act 2007* (A2007-24) and *Planning and Development Regulation 2008* (SL2008-2) on commencement of this Act, chapter 17 provides transitional provisions to deal with the transition from the old law to the new law.

The transitional provisions in this Act will enable the making of regulations which may modify this Act – a form of Henry VIII clause. It is acknowledged that these clauses are generally not preferable. In developing this Act, every attempt has been made to foresee issues arising in the transition. However, it is considered that this provision is necessary in this Bill as there is no practical alternative available to ensure that any unforeseen matters which might arise during the implementation of this Act’s provisions can be addressed expediently. This power is limited by time and is confined to the purpose of supporting the enactment of this Act.

## **Part 20.1 Transitional—general**

### **Clause 600 Definitions—ch 20**

This clause defines the terms ‘commencement day’ and ‘repealed Act’ to provide a consistent meaning in this chapter.

### **Clause 601 Transitional regulations**

This clause enables the Executive to make regulations dealing with transitional matters. This section contains two different regulation making powers.

Section 601 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of this Act. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of this Act and not widen the Act’s purpose.

Section 601 (2) enables the making of a regulation that modifies this Act. A regulation under this section may only modify chapter 20 of this Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of this Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 601 (3) gives a regulation under section 601 (2) full effect according to its terms. A provision of chapter 20 of this Act modified by regulation will operate in the same way (in relation to another provision of this Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. This section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 20 of this Act has no ongoing effect after the expiry of that chapter.

### **Clause 602 Expiry—ch 20**

This clause provides for this chapter to expire 3 years after the day it commences.

## **Part 20.2 Transitional—strategic and spatial planning**

### **Clause 603 Planning strategy**

This clause provides that the planning strategy in schedule 1 of the *Planning and Development (Planning Strategy) Notice 2018* (NI2018—665) is taken to be the planning strategy under this Act.



#### **Clause 604 District strategy**

This clause provides that public consultation undertaken on the district strategy prior to the commencement day of this Act is taken to be public consultation under this Act.

### **Part 20.3 Transitional–territory plan**

#### **Clause 605 Territory plan–preparation**

This clause requires the Territory Planning Authority to prepare a draft Territory Plan within 6 months of the commencement of this Act.

#### **Clause 606 Draft territory plan to be given to Executive etc**

This clause provides that the Territory Planning Authority must give the draft Territory Plan (or revised draft Territory Plan) to the Executive for making after the consultation period for the draft Territory Plan ends. The consultation report must include issues raised during consultation about the Plan.

#### **Clause 607 Territory plan–Executive’s powers**

This clause provides that on receiving the draft Territory Plan (or revised draft Territory Plan), the executive must make or amend the Plan. The Plan must be published on the Authority website.

#### **Clause 608 Territory plan to be given to Assembly committee**

This clause provides that when the Territory Plan is made, the Legislative Assembly must decide whether to hold an inquiry within 7 days. The inquiry must be held within six months.

#### **Clause 609 Interim territory plan**

This clause allows the Minister, at the same time of providing the Territory Plan to the Legislative Assembly committee to also present an interim Territory Plan to the Assembly for approval.

The Assembly may approve the plan regardless of whether the committee has provided a report. The interim Territory Plan commences on the day fixed by the Minister by written notice.

#### **Clause 610 Approval or confirmation of territory plan**

This clause provides for the Legislative Assembly, by resolution, to either approve the amended Territory Plan or confirm the interim Territory Plan as the Territory Plan and commences on the day fixed by the Minister by written notice.

#### **Clause 611 Consultation before commencement**

This clause clarifies that consultation includes consultation that occurred prior to the commencement of this Act.

### **Clause 612 Expiry—pt 20.3**

This clause explains that this part expires on the day the Territory Plan commences.

## **Part 20.4 Transitional—development applications and approvals**

### **Clause 613 Development applications made before commencement day**

This clause provides that where a development application is lodged with the territory planning authority before commencement day of this Act, the relevant provisions of the 2007 Act, including the Territory Plan 2008, continue to apply. An application may be amended under the provisions of the 2007 Act within six months of the commencement of this Act.

However, applications made under sections 137AA, 137AB and 137AD of the 2007 Act are taken to be withdrawn on the commencement of this Act.

The terms 'finalised', 'finally decided', 'non-ACAT reviewable decision', 'original decision', 'reconsideration application', 'review' and 'review period' are defined to provide a consistent meaning in this section.

### **Clause 614 Development approvals under repealed Act**

This clause provides that a development application approved under the 2007 Act before or after the commencement of this Act is taken to have been made under the 2007 Act. The development application remains in force until it would have under the 2007 Act and any relevant provisions of that Act continue to apply. An application to amend a development application under the 2007 Act must be made within six months of the commencement of this Act.

### **Clause 615 Applications to amend development approvals made before commencement day**

This clause provides that where an application to amend a development application is lodged before the commencement of this Act, the amendment application will be assessed as if the application was made under the 2007 Act.

The terms 'decision-maker' and 'finally decided' are defined to provide a consistent meaning in this section.

### **Clause 616 Applications to amend development approvals under repealed Act at least 6 months after commencement day**

This clause provides that where a development application approved under the 2007 Act changes more than six months after the commencement of this Act, the proposed changes will be considered under this Act.

### **Clause 617 Declarations for development encroaching on adjoining land before commencement day**

This clause provides that a declaration under the 2007 Act is a declaration under this Act.

### **Part 20.5 Transitional—existing rights to use land, buildings and structures**

#### **Clause 618 Existing rights to use land etc not affected**

This clause provides that all existing rights to use land, buildings and structures in effect on commencement day are continued as if they had been made under this Act.

### **Part 20.6 Transitional—leases and licences**

#### **Clause 619 Status of leases or licences in force before commencement day**

This clause provides that leases and licences in effect on commencement day are continued as if they had been made under this Act.

#### **Clause 620 Continued application of certain repealed Acts and provisions**

This clause provides that certain leases and licences made under the *Australian National University (Leases) Act 1967 (repealed)*, *Church Lands Leases Act 1924 (repealed)*, *City Area Leases Act 1936 (repealed)*, *Leases (Special Purposes) Act 1925 (repealed)* and *Leases (Special Purposes) Act 1925 (repealed)* in effect on commencement day are continued as if they had been made under this Act.

The term 'continuing CALA lease' is defined to provide a consistent meaning in this section.

#### **Clause 621 Grants of leases commenced but not completed before commencement day**

This clause provides that where a pre-grant process has commenced, but is not complete, for the grant of a lease by auction, tender, ballot or direct sale under the repealed Act, the pre-grant process is taken to have been completed under this Act.

The term 'pre-grant process' is defined to provide a consistent meaning in this section.

#### **Clause 622 Applications for grant of further leases**

This clause provides that where a person has applied for a further lease under the 2007 Act before the commencement day of this Act, the application will be assessed as if the application was made under the 2007 Act.

Where a lease expires within six months of the commencement of this Act and an application has not been lodged to extend the lease, the application will be assessed under this Act.

**Clause 623 Applications by community organisations for direct sale before 6 December 2017**

This clause provides that an undecided application made by a community organisation for the grant of a lease by direct sale before 6 December 2017 will be assessed as if the application was made under the 2007 Act as in force immediately before 2 April 2020.

2 April 2020 is the commencement day for the *Planning and Development (Community Concessional Leases) Amendment Act 2019*. The provisions of the 2007 Act prior to the commencement of these reforms are intended to apply.

**Clause 624 Applications to vary concessional leases made before 2 April 2020**

This clause provides that an undecided application made by a person to vary a concessional lease before 2 April 2020 will be assessed as if the application was made under the 2007 Act as in force immediately before 2 April 2020.

This will ensure the provisions of the 2007 Act prior to the commencement of the *Planning and Development (Community Concessional Leases) Amendment Act 2019* apply.

**Clause 625 Applications for licences for unleased land made before commencement day**

This clause provides that where a person has applied for licences for unleased land made under the 2007 Act before the commencement day of this Act, the application will be assessed as if the application was made under the 2007 Act. Where a licence has been granted it is taken to have been granted under this Act.

**Part 20.7 Transitional—building and development provisions— extension of time to complete works**

**Clause 626 Extensions of time to complete works under repealed Act**

This clause provides that where a person has been granted an extension of time to complete works under the repealed Act, division 9.9.3 of the 2007 Act, the extension of time provisions are taken to apply under this Act. Required fees may be payable under this Act.

**Clause 627 Extensions of time to complete works under repealed Act— extension to another stated time**

This clause provides that where a person has been granted an extension of time to complete works under section 298B (2) (a) of the 2007 Act, the

extension of time provisions are taken to be the new compliance time as apply under this Act. Required fees may be payable under this Act.

## **Part 20.8 Transitional—environmental significance opinions**

### **Clause 628 Applications for environmental significance opinion made before commencement day**

This clause provides that where the Minister has applied for an EIS exemption for a development proposal under the 2007 Act, and the application is undecided prior to the commencement of this Act, the application will be assessed as if it was made under the 2007 Act.

### **Clause 629 Environmental significance opinions given under repealed Act**

This clause provides that where an unexpired environmental significance opinion was provided under the 2007 Act, the opinion is taken to be given under this Act.

## **Part 20.9 Transitional—design review panel**

### **Clause 630 Consultation with design review panel before commencement day**

This clause provides that where a proponent for a prescribed development proposal consulted with the design review panel under the 2007 Act, the consultation is taken to have occurred under this Act.

### **Clause 631 Design review panel consideration before commencement day**

This clause provides that where the design review panel takes action in relation to a development proposal under the 2007 Act, the action is taken to have occurred under this Act. The design advice expires 18 months after it was given.

## **Part 20.10 Transitional—environmental impact statements**

### **Clause 632 Applications for EIS exemption made before commencement day**

This clause provides that where the proponent of a development proposal applied to the Minister for an EIS exemption before the commencement of the 2007 Act and the application was not decided, the application will be assessed as if it were made under the 2007 Act.

### **Clause 633 EIS exemptions granted under repealed Act**

This clause provides that where the Minister approved an EIS exemption for a development proposal under the 2007 Act, and the EIS has not expired and a development application has not been lodged, the EIS exemption will be finalised under this Act and expire as it would have under the 2007 Act.

The terms 'notified', 'recent study' and 'relevant day' are defined to provide a consistent meaning in this section.

**Clause 634 EIS completed under repealed Act**

This clause provides that an unexpired EIS completed under the 2007 Act will be finalised under this Act and expires a maximum of five years after it commenced.

**Clause 635 Public health-related EIS completed under repealed Act**

This clause provides an unexpired public health-related EIS completed under the 2007 Act will be finalised under this Act and expires a maximum of five years after it commenced.

**Clause 636 EIS process commenced but not completed before commencement day**

This clause provides that where a development application is lodged before the commencement of the 2007 Act and an EIS has not been completed, the application will be assessed as if it were made under the 2007 Act.

**Part 20.11 Transitional—rent variations and relief from provisions of leases**

**Clause 637 Reduction of rent and relief from provisions of lease approved before commencement day**

This clause provides that any reduction of rent and relief from provisions of lease in effect on commencement day are continued as if they had been made under this Act.

**Clause 638 Reduction of rent and relief from provisions of lease approved after commencement day**

This clause provides that any reduction of rent and relief from provisions of lease approved on or after commencement day may include a period prior to the commencement of this Act.

**Part 20.12 Transitional—land management agreements**

**Clause 639 Land management agreements entered into before commencement day**

This clause provides that all land management agreements in effect on commencement day are continued as if they had been made under this Act.

**Part 20.13 Transitional—land management plans**

**Clause 640 Land management plans**

This clause lists the land management plans in effect on commencement day as continued as if they had been made under this Act.

### **Clause 641 Draft land management plans**

This clause provides that where a public consultation notice about a draft land management plan has not been notified before the commencement of this Act, the plan is taken to have been prepared under this Act.

## **Part 20.14 Transitional—controlled activities**

### **Clause 642 Controlled activities—construction without development approval**

This clause provides that a building or other structure constructed without development approval required by this Act includes construction where development approval was provided under the *Planning and Development Act 2007* (repealed), chapter 7 (Development approvals), the *Land (Planning and Environment) Act 1991* (repealed), division 6.2 (Approvals) and the *Buildings (Design and Siting) Act 1964* (repealed).

## **Part 20.15 Transitional—review of decisions**

### **Clause 643 Applications for review not finally decided**

This clause provides that where an application (other than one related development application) to made with ACAT for review of a reviewable decision before the commencement of this Act, the application will be considered as if it were made under the 2007 Act.

The term 'reviewable decision' is defined to provide a consistent meaning in this section.

## **Part 20.16 Transitional—administrative**

### **Clause 644 Chief planning executive**

This clause provides that the Chief Planner appointed under the 2007 Act prior to the commencement of this Act, continues to be the Chief Planner on commencement of this Act.

### **Clause 645 Acting chief planning executive**

This clause provides that the acting Chief Planner appointed under the 2007 Act prior to the commencement of this Act, continues to be the acting Chief Planner on commencement of this Act.

### **Clause 646 Inspectors appointed before commencement day**

This clause provides that an inspector appointed under the 2007 Act prior to the commencement of this Act, continues to be an inspector on commencement of this Act.

## **Part 20.17 Transitional—exempt development**

### **Clause 647 Guidelines for essential work at affected residential premises**

This clause provides that the guidelines in schedule 1 of the *Planning and Development (Essential Works at Affected Residential Premises) Guidelines 2020 (No 2)* (NI2020-476) are taken to be guidelines for any regulation made under section 143 (1) (b) of this Act that is equivalent to the *Planning and Development Regulation 2007*, schedule 1, section 1.17.A.

## **Chapter 21 Repeals**

Chapter 21 lists all the legislation and legislation instruments that are being repealed.

### **Clause 648 Legislation repealed**

This clause provides the legislation and other legislative instruments that are repealed on commencement of this Act.

## **Schedule 1 Preserved leases**

Schedule 1 defines preserved leases and preserved lease use. While preserved leases are a new term defined through this Act, the concept has been retained and builds on previous criteria under previous planning law.

### **Part 1.1 Preliminary**

Part 1.1 defines the term ‘preserved lease use’ in relation to land described in a preserved lease for use in schedule 1.

### **Part 1.2 Preserved leases**

Part 1.2 provides the schedule that sets out the leases that are considered a preserved lease under this Act. There are three items provided for in column 1, with column 2 providing a description of each preserved lease.

## **Schedule 2 Information and documents for certain development applications**

Schedule 2 sets out the information or documents to be provided with a development application. This information has been included in a schedule to reduce the complexity of the legislation and make the planning system simpler and easier to use in accordance with the aim of the review.

### **Part 2.1 Preliminary**

Part 2.1 defines the terms ‘expected greenhouse gas emissions statement’ and ‘greenhouse gas emissions’ for use in schedule 2.



## **Part 2.2 Information and documents for certain development applications**

Part 2.2 lists the information or documents that must be provided in column 3 with each type of development application in column 2. There are 12 items in column 1.

## **Schedule 3 Market value leases and leases that are possibly concessional**

Schedule 3 sets out the types of leases that are considered a market lease and those that may be concessional. This information has been included in a schedule to reduce the complexity of the legislation and make the planning system simpler and easier to use in accordance with the aims of the review.

### **Part 3.1 Preliminary**

Part 3.1 defines the terms 'incorporated association', 'rental lease', 'residential lease' and 'rural lease' for use in schedule 3.

### **Part 3.2 Market value leases**

Part 3.2 list the leases that are a market lease in column 2. There are 21 items in column 1.

### **Part 3.3 Possibly concessional leases**

Part 3.3 lists the leases that are possibly a concessional lease in column 2. There are 11 items in column 1. A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in part 3.2.

## **Schedule 4 Management objectives for public land**

Schedule 4 sets out the management objectives for different areas of public land. These are to be considered when drafting a land management plan under this Act.

### **Part 4.1 Preliminary**

Part 4.1 defines the terms 'Aboriginal object', 'Aboriginal place' and 'natural environment' for use in schedule 4.

### **Part 4.2 Management objectives for areas of public land**

Part 4.2 lists the management objectives in column 3 for each type of reserve purpose in column 2. There are 10 items in column 1.

The conservator of flora and fauna may determine additional management objectives for an area of public land through a disallowable instrument made under section 383.

## **Schedule 5    Controlled activities**

Schedule 5 lists controlled activities. 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. This Act introduces discretion into the controlled activity order process. A person will be able to lodge a complaint in accordance with the existing complaints process. The Territory Planning Authority will then have discretion whether to consider making a controlled activity order.

Column 3 provides for penalties where a person is found guilty of conducting a controlled activity specified in this schedule. A maximum penalty of 60 penalty units has been set. This is to reflect the seriousness of the offence and to act as a sufficient deterrent to the behaviour.

Column 2 lists the controlled activities and there are 10 items in column 1.

Two new controlled activities have been introduced in addition to those in the 2007 Act:

- undertaking a prohibited development, other than in accordance with a development approval allowed under div 7.4.1 of this Act or as authorised by a lease if development approval is not required; and
- failing to use land for a continuous period of at least 1 year for the purpose for which the lease over the land is granted.

All leases already contain a purpose clause and a termination clause which allows termination where land is not continually used for the purpose for 12 months. This does not introduce new obligations or limits on the use of land, rather it aligns the statutory scheme with the leasing scheme and enables the use of statutory enforcement mechanisms in relation to this existing right under the lease.

## **Schedule 6    Reviewable decisions, eligible entities and interested entities**

Schedule 6 sets out the decisions that are reviewable by the ACT Civil and Administrative Tribunal (ACAT) under this Act, and the eligible and interested entities for each review. This Act 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.

However, this Act departs from the approach of the 2007 Act, which limits the ability of ACAT to review all parts of the original decision. This Act facilitates a shift to an outcomes-focussed planning system. The focus of decision-making under this Act is the achievement of good planning and development outcomes, not compliance with quantitative and prescriptive rules.

## **Part 6.1 Preliminary**

Part 6.1 defines the term 'material detriment' for use in schedule 6.

## **Part 6.2 Reviewable decisions, eligible entities and interested entities**

Part 6.2 lists the reviewable decisions for the purposes of chapter 15 in column 2, the eligible entities who can apply to ACAT for review of the decision in column 3 and the interested entities who can apply to be joined to the review in column 4. There are 43 items in column 1.

## **Schedule 7 Matters exempt from third party ACAT review**

Schedule 7 sets out the matters that are exempt from third party review by ACAT.

A key approach of this Act is to identify categories of decision that are exempt from third party review in this Act, rather than in the regulation. Seventeen items were listed as exempt from review under the *Planning and Development Regulation 2008*. Schedule 7 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 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 this Act.

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.

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.

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.

### **Part 7.1 Preliminary**

Part 7.1 defines the terms 'Belconnen town centre', 'city centre', 'Gungahlin town centre', 'Kingston Foreshore', 'town centre', 'Tuggeranong town centre', 'University of Canberra site' and 'Woden town centre' for use in schedule 7.

### **Part 7.2 Matters exempt from third party ACAT review**

Part 7.2 lists the matters that are exempt from third party review in column 2. There are eight items in column 1.

### **Part 7.3 Maps**

Part 7.3 provides maps of the City centre, Belconnen town centre, Gungahlin town centre, Tuggeranong town centre, Woden town centre, Kingston Foreshore and the University of Canberra site to define each area for the purpose of understanding whether a matter is in an area that is exempt from third party review by ACAT under this schedule.

## **Dictionary**

The Dictionary sets out the definitions for this Act.