

City Renewal Authority and Suburban Land Agency (Draft Revitalisation Plan) Approval 2025

Disallowable instrument DI2025–27

made under the

City Renewal Authority and Suburban Land Agency Act 2017, s 36D (Draft revitalisation plan—approval)

EXPLANATORY STATEMENT

This explanatory statement relates to the *City Renewal Authority and Suburban Land Agency (Draft Revitalisation Plan) Approval 2025* (the **instrument**) as made by the Minister, under section 36D of the *City Renewal Authority and Suburban Land Agency Act 2017* (the **Act**).

It has been prepared to assist the reader of the instrument. It does not form part of the instrument and has not been endorsed by the Legislative Assembly.

OVERVIEW

The Sydney and Melbourne Buildings are historic buildings in Canberra City. The buildings have a unique ownership structure in that each unit or shop in the buildings is a separate Crown lease. Each unit or shop is therefore individually leased to different lessees, each responsible for their own property. There is no single body with overarching responsibility for maintaining the buildings. As a result of this large and diverse lease structure, there are significant challenges in achieving a uniform approach to the maintenance and appearance of the buildings.

The *City Renewal Authority and Suburban Land Agency Amendment Act 2020* (the **amendment Act**) inserted division 2.9 into the Act, detailing the process for revitalising the Sydney and Melbourne Buildings. The amendment Act established the process for the City Renewal Authority (the **authority**) to compel revitalisation of the Sydney and Melbourne Buildings, including through preparing a draft revitalisation plan for the buildings and consulting on the draft plan.

Section 36D of the Act provides that the Minister may approve the final version of the revitalisation plan for the Sydney and Melbourne Buildings.

In accordance with section 36D of the Act, the Minister must only approve a draft revitalisation plan if the plan is consistent with any submission received from the

Conservator of Flora and Fauna (the **conservator**), the ACT Heritage Council (the **council**), or the director-general responsible for the *Urban Forest Act 2023*, if the proposed plan involves works that may affect a public tree, as per under section 36B (3) (c) of the Act.

The revitalisation plan, once approved, requires the owners of the Sydney and Melbourne Buildings to carry out work stated in the revitalisation plan within a stated period. If that work has not been carried out by the owner within the stated period, section 36E of the Act provides that the authority may give an owner a written direction requiring the stated work to be completed. If the work is not completed in accordance with the direction, the authority may arrange someone else to carry out the work at the owner's expense.

CONSULTATION

The authority has undertaken an extensive community engagement program since 2019 to develop the draft revitalisation plan. This includes both statutory and non-statutory engagement with building owners, businesses, members of the public and government entities, including the conservator and the council. In addition to the revitalisation plan, the authority has also developed a *Sydney and Melbourne Buildings Conservation Management Plan (SMB CMP)* approved by the council under the *Heritage Act 2004*, section 61K and section 110 on 2 February 2022. The SMB CMP is available on the ACT Heritage register.

REGULATORY IMPACT STATEMENT (RIS)

The approval of the draft revitalisation plan is likely to impose appreciable costs on part of the community and therefore a regulatory impact statement (a **RIS**) is required under section 34 of the Legislation Act 2001 (the **Legislation Act**).

A RIS has been prepared to accompany this instrument, in accordance with the requirements set out in section 35 of the Legislation Act.

CONSISTENCY WITH HUMAN RIGHTS

The Standing Committee on Legal Affairs (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters.

As outlined in the explanatory statement to the City Renewal Authority and Suburban Land Agency Amendment Bill 2020, if a lease is owned by or whose tenants are individuals (that is, not a corporation), there may be an engagement of human rights under the *Human Rights Act 2024* (the **HR Act**). Specifically, the rights that may be engaged are:

- **Section 8 – recognition and equality before the law**

The approval of the draft revitalisation plan may discriminate against specific property owners – those owning leases within the Sydney and / or Melbourne Buildings, who have not elected to participate in the grant program.

In developing the draft revitalisation plan, the authority extensively consulted with all building owners and considered submissions and feedback from building owners. This extensive engagement was undertaken prior to commencing the legislated process, which included a public consultation period of 30 days under section 36C of

the Act, in order to compel remaining owners to undertake the required works in accordance with the approved revitalisation plan and SMB CMP.

The limitations on section 8 of the HR Act, are proportionate to achieving the purposes of conserving buildings of such historical and cultural significance. Moreover, the Act provides for safeguards; in providing that the issuing of a direction to an owner to undertake works to comply with the revitalisation plan is a decision reviewable by the ACT Civil and Administrative Tribunal (ACAT) and requiring the authority to consult with building owners in the development of a revitalisation plan.

- **Section 12 – right to privacy and reputation**

The approval of the draft revitalisation plan does not specifically engage with the right to privacy and reputation, however, as its approval is required for the issuance of a direction by the authority, a direction to an individual could be construed as engaging with the right to privacy and reputation, particularly unlawful and arbitrary interference with the home.

However, as the leases for the Sydney and Melbourne buildings are commercial leases, a direction to comply, following the approval of the draft revitalisation plan cannot be considered unlawful or arbitrary interference with home. Moreover, with the review rights in the Act, it is considered a proportionate measure to ensure alignment with the approved revitalisation plan and SMB CMP.

- **Section 16 – freedom of expression**

There is potential that enforcing an owner to comply with a direction, in accordance with an approved revitalisation plan, may engage the human right of freedom of expression, including limiting a person's right to communicate their religious, political or social beliefs.

It is important to note that the approval of the draft revitalisation plan itself, as per this instrument, does not specifically engage this right, rather, this right may be engaged under section 36E of Act.

To minimise the restriction on this human right, as regards the direction to comply, safeguards were included in the Act, as the revitalisation plan is required to be approved by the Minister, in the form of a disallowable instrument. As such, this explanatory statement and discussion of the human rights engaged in the approval of the draft revitalisation plan, as well as the potential disallowance process and consideration by the Scrutiny of Bills Committee consideration, is consider proportion to achieve the uniform approach to the maintenance and appearance of the buildings.

- **Section 21 – fair trial**

While the Minister's approval of the draft revitalisation plan is required for, the authority to issue a direction to an owner to comply with an approved revitalisation, merit review is provided for under section 36F of the Act. As such, any restriction to the right to fair trial is limited.

The direction to comply, which is further to the power under section 36D, gives the owner notice that the revitalisation plan is being enforced and there is a requirement to provide a reasonable time in which to comply.