



15 June 2022

Australian Institute of Architects ACT Chapter's Response to the ACT Planning System Review and Reform Project

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation representing over 12,500 members across Australia and overseas. Approximately four hundred of these members are based in Canberra and supported by the ACT Chapter.

We welcome the opportunity to provide our response to the Government's ACT Planning System Review and Reform Project. Please contact our ACT Executive Director, Ms Liz Lang on liz.lang@architecture.com.au for further information.

1. Key Objectives

The Institute believes that the planning reforms are a once in a generation opportunity to create a better planning system that facilitates certainty, equity, affordability, sustainability, housing choice, active transport, and design quality for a compact city.

Our feedback on the planning system documents includes suggested amendments to clauses that we believe would make the most difference to quality planning and design outcomes in the ACT based on

- the **key principles** of the planning reform project: **easy to use, certainty, flexibility, transparency and outcomes focused**
- ACT Government's strategic spatial planning objectives of good design, good planning and good consultation: **sustainability and resilience; integrated delivery; high quality design principles; long term focus; urban regeneration; activation and liveability; natural environment conservation; and investment facilitation principles**

2. Planning Reform

2.1 INTEGRATED DELIVERY & EASY TO USE DELIVERING ON URBAN REGENERATION, ACTIVATION AND LIVEABILITY

The Institute believes a more streamlined system would deliver on the key principles of the Planning Bill: easy to use, certainty, flexibility, transparency and outcomes focused by incorporating:

- **"maximum building plot ratio and maximum envelope"** to enable flexibility and innovation in good design approaches including number of floors allowable
- **"maximum hardstand plot ratio"** to minimise adverse heat island effects by reducing excessive hardstand, turning circle, driveway and carparking requirements
- **"green plot ratio"** encompassing tree canopy and other green infrastructure metrics"



The Institute believes that planning reform should be streamlined and aligned with the strategic spatial planning objectives to deliver an integrated approach to planning. However, recent experience gives cause for concern that there is a piecemeal approach to planning demonstrated by the tree canopy coverage reform with V369 and the urban forest legislation. A myriad of complex rules has been created with substantial gaps that do not deliver on the retrofitting of tree canopy coverage so desperately needed in recently developed areas. Gaps such as those identified in the tree canopy legislation perpetuate growing inequity across our city.

A streamlined and integrated planning approach must address climate resilience and integrate with other ACT government policies and planning such as the ACT Government Infrastructure Plan to ensure net zero carbon 2030 and 2050 goals, provide equity of access to services, and facilitate active public transport for all Canberrans.

2.2 GOOD DESIGN, FLEXIBILITY & INVESTMENT FACILITATION PRINCIPLES

The Institute notes the establishment of a new Territory Planning Authority to be led by the Chief Planner with a mandate that includes promoting “high quality design and good planning outcomes” but emphasises the importance of strengthening the relationship with the Design Review Panel and the ACT Government Architect.

The Institute will be looking to ensure that there is a requirement for the Chief Planner to consider the professional advice of either the Design Review Panel or the ACT Government Architect or both. Appropriate governance and funding are required for the ACT Government Architect and the Design Review Panel aligned with the new planning system objective to facilitate good design including:

- Chief Planner should be required to consider the design advice of the Design Review Panel for all Significant Projects and Territory Priority Projects
- Chief Planner should be able to provide development approval contrary to entity advice (planning rules) if they are satisfied that acting contrary to the advice will significantly improve the design outcome to be achieved in accordance with the independent professional design advice of the Design Review Panel.

The Institute would also like to see the Territory come into line with other jurisdictions recognising that appropriately qualified design and engineering professionals are required to deliver on design quality for significant projects.

The Institute will be looking to see that appropriate ongoing funding is secured to facilitate the activities of the ACT Government Architect and the Design Review Panel who are critical to delivering the “Good Design” outcomes proposed by the Minister.

The planning bill suggests that the Minister sets the design principles to be followed by the Design Review Panel. The Institute recommends that Good Design Principles are appropriately defined in the planning system so that the community, proponents, development application assessors, Design Review Panel and Administrative Appeals Tribunal are all working to the same principles, and that those principles have regulatory effect.

Private proponents should be able to access Territory Priority Project approval pathways where the proposed development provides a significant social, environmental, and economic benefit to the people of Canberra.

2.3 OUTCOMES-FOCUSED INCLUDING GOOD DESIGN

Canberra is a fast-growing city. We need a fit-for-purpose planning system that puts people first through a strong focus on great design. Our review of the consultation materials provided by the Government is encouraging. It is particularly welcome to see the principle of high-quality design embedded in the new Planning Bill.

The switch from a rules-based system to an outcomes-focused approach must not come at the expense of good design or the best interests of the community.



This is the ideal opportunity to strengthen the role of the Design Review Panel and give it more power to facilitate better design in our city. The object of the planning system should be to set not only the minimum standard but also the great design and sustainability aspirations for our city.

2.4 FLEXIBILITY & TRANSPARENCY

The Institute is championing a planning system where more authority is given to the Design Review Panel to promote good design outcomes and facilitate fast and efficient approvals, while maintaining appropriate checks and balances.

Approved development applications should be publicly available through an improved e-approvals system managed by the Planning Authority until at least 6 months after the certificate of occupation has been issued on a project to provide transparency and enable the public to confirm that the developer has complied with the approval and all conditions on completion of the project. Development approvals should provide transparency on good design outcomes especially for Territory Priority Projects where it should include both the advice of the Design Review Panel and the Chief Planner. Advice should give reasons for deviation from entity advice and other government policy where relevant.

2.5 SUSTAINABILITY, CLIMATE RESILIENCE AND NATURAL ENVIRONMENT CONSERVATION

To facilitate a transition to a climate-resilient future and lower operating costs, the Institute believes that all new residences and adapted or extended residences should meet appropriate environmental standards increasing towards 2030 and 2050 low carbon goals.

Importantly, we need to ensure the planning system facilitates a fast and economical transition to net-zero emissions and builds our resilience in the face of worsening climate-change impacts. The object of the Territory Plan is inconsistent with the Planning Bill object as there is no mention of environment, sustainability, or climate change mitigation.

The Institute believes that the planning system reform project should clearly define how it intends to support the construction industry to become carbon neutral by 2030 through investment in, and expansion of, the Trajectory for Low Carbon Buildings including increased stringency in planning requirements and the National Construction Code.

To facilitate a transition to a climate-resilient future and lower operating costs, all new developments in the ACT should consider their carbon footprint and contribution to reduction of the heat island effect. Climate offsets should consider negative impacts on adjoining neighbourhoods due to climate change. For example, this could include adverse effects of adding to the heat load on an adjoining development or public space through lack of tree canopy cover and/or excessive hardstand.

The Institute believes that a “green plot ratio” encompassing tree canopy and other green infrastructure metrics would be more successful at facilitating good design, innovation, green blue infrastructure, and biodiversity than the current system of protecting individual trees.

The Institute applauds the references to ecologically sustainable development, to achieve a diverse, efficient, resilient and strong Territory economy that allows communities to meet their needs without compromising the ability of future generations to meet their needs. However, the use of the term *economic development* could have unintended consequences and may be better described as sustainable development if that is the intent. Further, the precautionary principle included in this section should include guidance for decision makers similar to the NSW legislation in that decisions should be guided by: (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and (ii) an assessment of risk-weighted consequence of various options.

2.6 CERTAINTY & INVESTMENT FACILITATION PRINCIPLES

The Institute believes that more work is required to facilitate certainty in property investment and that approvals must be given within reasonable statutory timeframes or otherwise must be deemed approved. It is the responsibility of the



Government through the Chief Planner to ensure that the Territory Planning Authority has the appropriate number of staff with the necessary qualifications required to meet its statutory obligations. Proponents should be entitled to compensation for ongoing expenses incurred due to failure to meet statutory timelines.

Appropriate resourcing will be required for the Design Review Panel and the ACT Government Architect to facilitate the ACT Government's good design objectives. Funding and resourcing must be increased to align with the expectations of the new system and the current economic context to reduce risk and deliver on good quality outcomes including the provision of suitably qualified staff from the Planning Authority to support the Government Architect and Design Review Panel to discharge their duties.

The Design Review Panel should be comprised of qualified and respected design professionals and should be refreshed at regular intervals to enable both consistency and a diversity of perspectives. Protection of members of the Design Review Panel from liability should be consistent with the protection provided to EIS Inquiry Members.

The planning system should facilitate a compact city considering housing choice and affordability (especially in older areas with relatively large block sizes) by simplifying approvals for multi-dwelling urban infill developments where the multiple dwellings inclusive of carparking are designed as a cohesive single residential form (eg duplex, manor house, multigenerational residential typology) that would otherwise comply with the single dwelling development criteria.

The new planning system must incorporate streamlined approval pathways for urban infill to provide modest, sustainable, and affordable housing to deliver on compact city goals that are equitable across our community. There needs to be a move away from the current system of excessive extended approval processes that can result in neighbourhood friction to a better planning system that delivers affordable, social, equitable and sustainable outcomes.

2.7 CERTAINTY WITH A LONG-TERM FOCUS

A planning outcomes-focus relies on the revision of the strategic plan, district plans and the territory plan. The current territory plan is highlighted as requiring significant restructuring. Key information is missing from the planning consultation documents including how the outcomes focus will be implemented.

A long-term focused approach must address climate resilience and integrate with other ACT government policies and planning such as the ACT Government Infrastructure Plan to ensure net zero carbon 2030 and 2050 goals, equity of access to services and facilitate active public transport for all Canberrans.

Key recommendations to improve alignment to ACT Government strategic planning objectives		easy to use	certainty	flexibility	transparency	outcomes focused	sustainability and resilience	integrated delivery	high quality design principles	long term focus	urban regeneration	activation and liveability	natural environment conservation	investment facilitation principles
TRANSPARENCY AND APPROPRIATE GOVERNANCE	<p>TRANSPARENCY AND APPROPRIATE GOVERNANCE and funding for the ACT Government Architect and the Design Review Panel aligned with new planning system objective to facilitate “good design”.</p> <ul style="list-style-type: none"> Chief Planner must consider the design advice of the Design Review Panel for all Significant Projects and Territory Priority Projects Chief Planner must consider the design advice of the Design Review Panel for all projects referred to the Design Review Panel. Chief Planner can provide development approval contrary to entity advice if they are satisfied that acting contrary to the advice will significantly improve the design outcome to be achieved in accordance with the design advice of the Design Review Panel 													
COMPACT CITY	To facilitate a COMPACT CITY with housing choice and affordability (especially in older areas with relatively large block sizes) by simplifying approvals for multi-dwelling urban infill developments where the multiple dwellings inclusive of carparking are designed as a cohesive single residential form (eg duplex, manor house, multigenerational residential typology) that would otherwise comply with the exempt development criteria.													
GOOD DESIGN	The Planning Bill suggests that the Minister sets the design principles to be followed by the Design Review Panel. The Institute recommends that the GOOD DESIGN PRINCIPLES are appropriately defined in the planning system so that the community, proponents, development application assessors, Design Review Panel and Administrative Appeals Tribunal are all working to the same principles and that those principles have regulatory effect.													
TRANSITION TO A CLIMATE RESILIENT FUTURE	To facilitate a TRANSITION TO A CLIMATE RESILIENT FUTURE and LOWER OPERATING COSTS that all new developments in the ACT considers their carbon footprint and contribution to reduction of the heat island effect. The object of the Territory Plan is inconsistent with the Planning Bill object as there is no mention of environment, sustainability nor climate change mitigation.													
APPROVAL TIMEFRAMES	To facilitate CERTAINTY in property investment and programming, approvals must be given within reasonable statutory timeframes or otherwise deemed approved, or proponents compensated for the delay. It is the responsibility of the Government to ensure that the Territory Planning Authority and referral agencies such as ACT Heritage and TCCS have the number of staff with the necessary qualifications required to meet its statutory obligations. Proponents should be entitled to compensation for ongoing expenses incurred due to failure to meet statutory timelines.													

3. Planning Bill 2022 Proposed amendments to clauses

Planning Bill 2022 Consultation draft	Proposed amendments
<p>8 Meaning of ecologically sustainable development</p>	<p>(1) In this Act: ecologically sustainable development means development involving the effective integration of the following principles: (a) the protection of ecological processes and natural systems at local, Territory and broader landscape levels; (b) the achievement of economic sustainable development;.....</p> <p><i>the precautionary principle</i> means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.</p> <p><i>In the application of the principle, decisions should be guided by:</i></p> <p><i>(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and</i></p> <p><i>(ii) an assessment of risk-weighted consequence of various options.</i></p>
<p>93 Functions of Design Review Panel</p>	<p>The Design Review Panel has the following functions: (a) to provide design advice to proponents of development proposals; (b) to exercise any other function given to the panel under this Act or another territory law.</p> <p><i>(c) to provide “good design” advice to the Chief Planner.</i></p>
<p>184 Restrictions on development approval</p>	<p>(1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following: (a) the relevant provisions in the territory plan; (b) for development relating to land described in a rural lease—any land management agreement for the land; (c) for development in relation to which an entity has given advice under section 168—the entity’s advice; Note Advice given outside the time required by s 168 is not entity advice for the purpose of that section but may be considered under s 181 (h). (d) for development that will affect a registered tree or declared site—the advice of the conservator of flora and fauna in relation to the application; (e) for development that is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth—any advice given by the Commonwealth Minister under section 186 in relation to the matter. Note A development application cannot be approved if it is inconsistent with the territory plan (see s 46) or the National Capital Plan (see Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth), s 11).</p> <p><i>(f) the design advice of the Design Review Panel.</i></p>
<p>9 Principles of good planning high-quality design principles means the following:</p>	<p>(a) development should be focussed on people and designed to— (i) reflect local setting and context; and (ii) have a distinctive identity that responds to the existing character of its locality; and (iii) effectively integrate built form, infrastructure and public spaces; (b) public spaces should be designed to be used, appropriately landscaped and vegetated, and should be designed to contribute to the urban forest; (c) built form and public spaces should be designed to be inclusive and accessible to people with differing needs and capabilities, including through the serious consideration of universal design practices; (d) developments should be planned and designed to be well-connected and integrated with surrounding development in ways that facilitate the safe, secure and effective movement of people within and through them.</p> <p><i>(e) development should be consistent with the design principles (and any design advice) of the Design Review Panel where consulted. Refer 6.2 (97)</i></p>

Planning Bill 2022 Consultation draft	Proposed amendments
140 Meaning of decision-maker—ch 7 decision-maker—	<p>(a) for a development application, means—</p> <ul style="list-style-type: none"> (i) if the application is for the removal of the concessional status of a lease—the Minister; and (ii) if the application is for a territory priority project—the chief planner after considering the advice of the design review panel; and (iii) in any other case—the territory planning authority; and <p>(b) for a development approval, means—</p> <ul style="list-style-type: none"> (i) if the approval is for the removal of the concessional status of a lease—the Minister; and (ii) if the approval is for a territory priority project—the chief planner after considering the advice of the design review panel; and (iii) if the territory planning authority decided the application for the approval under section 180—the authority.
180 Deciding development applications	<p>(3) A development application for a territory priority project must be decided by the chief planner. Change to</p> <p>(3) A development application for a territory priority project must be decided</p> <ul style="list-style-type: none"> (i) by the chief planner. (ii) with consideration of the design advice of the Design Review Panel
185 Development approval contrary to entity advice	<p>(1) A decision-maker may approve a development application if—</p> <p>(a) the application is for—</p> <ul style="list-style-type: none"> (i) a development proposal that is inconsistent with entity advice mentioned in section 184 (1) (c); or (ii) a territory priority project that is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184 (1) (d); and <p>(b) the proposal or project does not involve a protected matter; and</p> <p>(c) the decision-maker has considered both of the following:</p> <ul style="list-style-type: none"> (i) the desired outcomes applying to the proposal under the territory plan; (ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and <p>(d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved. Note The decision-maker for an application for a territory priority project is the chief planner (see s 140).</p> <p>(e) the decision-maker is satisfied that acting contrary to the advice will significantly improve the design outcome to be achieved in accordance with the design advice of the Design Review Panel. Note The decision-maker for an application for a territory priority project is the chief planner (see s 140).</p> <p>(2) Also, the chief planner may approve a development application if—</p> <ul style="list-style-type: none"> (a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and (b) the proposal is inconsistent with the advice of the conservator of flora and fauna mentioned in section 184(1) (c) in relation to the protected matter; and (c) the chief planner is satisfied that the proposal— <ul style="list-style-type: none"> (i) is consistent with the offsets policy; and (ii) would provide a substantial public benefit. <p>Note The chief planner’s approval must be consistent with approvals required under the EPBC Act.</p> <p>Note The chief planner’s approval must consider the design advice of the Design Review Panel.</p>
187 Time to decide development applications	<p>(6) The territory planning authority may reduce the decision time for an approval where this is consistent with the design advice of the design review panel; and where the territory would benefit from the reduced approval time.</p>

Planning Bill 2022 Consultation draft	Proposed amendments
188 Development applications not decided within time	<p>(1) This section applies if—</p> <p>(a) the time for deciding a development application has ended; and</p> <p>(b) the territory planning authority has not decided the application under section 180.</p> <p>(2) The territory planning authority may approve the application under section 180 (with or without conditions) even if the time for deciding the application has ended. Delete</p> <p>(3) To remove any doubt, the territory planning authority is taken to have decided to refuse an application under the ACT Civil and Administrative Tribunal Act 2008, section 12 (When no action taken to be decision) if the authority has not decided the application under section 180.</p> <p>(4) The territory planning authority deems the development application approved without conditions if the time for deciding the application has ended and the territory planning authority has not decided the application.</p>

Planning (Exempt Development) Regulation 2022	Proposed amendments
1.12 Criterion 5—no multiple occupancy dwellings	Development must not increase the number of dwellings on a block to 2 or more dwellings unless the multiple dwellings inclusive of carparking are designed as a cohesive single residential form and meet the requirements of a new housing choice and affordability design guideline. (ie manor house, duplex, etc)
Part 1.2 General exemption criteria 1.7 General exemption criteria	<p>(1) Development mentioned in part 1.4 (Development exempt from development approval) is exempt from requiring development approval if it meets each of the following criteria (the general exemption criteria):</p> <p>(a) section 1.8 (Criterion 1—easement and other access clearances);</p> <p>(b) section 1.9 (Criterion 2—plumbing and drainage clearances);</p> <p>(c) section 1.10 (Criterion 3—heritage, tree, environment and conservation);</p> <p>(d) section 1.11 (Criterion 4—compliance with lease and agreement collateral to lease);</p> <p>(e) section 1.12 (Criterion 5—no multiple occupancy dwellings);</p> <p>(f) section 1.13 (Criterion 6—affected residential premises);</p> <p>(g) section 1.14 (Criterion 7—compliance with other applicable exemption).</p> <p>(h) section 1.15 (Criterion XX—compliance climate resilience).</p>

Planning (General) Regulation 2022	Proposed amendments
Division 2.6 Development approvals 32 When development approvals do not require amendment—Act, s 204 (3)	<p>(3) However, subsection (2) does not apply if the change results in non-compliance with 1 or more of the following in the Planning (Exempt Development) Regulation 2022:</p> <p>(c) the requirement under schedule 1, section 1.130 (Compliant single dwellings) that there be not more than 1 dwelling on a block unless the multiple dwellings inclusive of carparking are designed as a cohesive single residential form and meet the requirements of a new housing choice and affordability design guideline. (ie manor house, duplex, etc)</p>