

The logo for actlaw society, with 'act' in orange, 'law' in white, and 'society' in grey, all in a sans-serif font, set against a dark blue rounded rectangle.

**actlaw**  
society



# 2024 Intensive Conference

**BRINGING THE BALANCE**

13 – 14 MARCH 2024 | NOVOTEL CANBERRA



# Navigating Key Updates: Contract for Sale & The Planning Act 2023 (ACT)

PRESENTED BY ADAM PEPPINCK AND CHRIS WHEELER

Clayton Utz and King & Wood Mallesons

13 MARCH 2024 | CANBERRA

# GENTLE URBANISM

## CANBERRA'S NEW PLANNING SYSTEM

CHRIS WHEELER (KING & WOOD MALLESONS)

KING&WOOD  
MALLESONS

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# AGENDA

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## 1

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### NEW PLANNING ACT

Material changes  
District strategies  
Outcomes focused  
Significant  
development  
Expiry of NOD  
Transitions rules

## 2

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### THE NEW TERRITORY PLAN

What has changed?  
District Strategies  
(details)  
The new TP in detail  
Territory Plan  
variations process

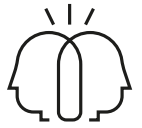


## NEW PLANNING ACT

# ACT PLANNING SYSTEM REVIEW AND REFORM PROJECT

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## NEW PLANNING ACT



**16 March 2022:**

Draft Bill released  
for comment



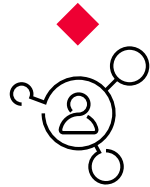
**21 September 2022:**

Bill presented to ACT  
Legislative Assembly



**20 June 2023:**

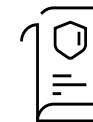
Commencement of  
*Planning Act 2023 (in part)*



**15 June 2022:**

Public submissions closed

## NEW TERRITORY PLAN AND DISTRICT STRATEGIES



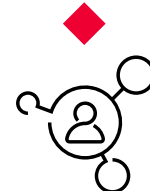
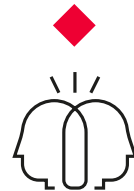
**27 November 2023:**

Approval of Interim  
Territory Plan



**1 November 2022:**

Released for  
comment



**3 March 2023:**

Public submissions  
closed



**11 September 2023:**

Interim Territory Plan  
released





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# NEW PLANNING ACT

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# SIMPLIFICATION

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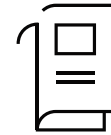
NEW PA

549 PAGES



NEW REGS

144 + 127 PAGES



NEW TP

OVER 40 DOCUMENTS  
OVER 1400 PAGES (AND  
COUNTING)

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# WHEN THE GUN WENT OFF

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The new act and Interim  
Territory Plan become  
effective 27 November 2023



# STRUCTURE

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1 REPLACES THE PLANNING AND DEVELOPMENT ACT

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2 SETS FRAMEWORK FOR PLANNING POLICY AND DA ASSESSMENT REGIME

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3 EMPOWERS THE NEW TP CREATION



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4 INTRODUCES NEW DISTRICT STRATEGIES (SEPARATE TO TP)

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5 MANAGES THE LEASEHOLD SYSTEM

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6 SETS THE DECISION REVIEW SYSTEM

# REGULATIONS

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- Now two regulations instead of one
- Provisions related to exempt developments are now in a separate regulation
- The general regulation cover process requirements and administrative details (eg EIS process, DRP review, direct sale rules, LVR rules)



Australian Capital Territory

## **Planning (General) Regulation 2023**

**Subordinate Law SL2023-20**

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The Australian Capital Territory Executive makes the following regulation under the *Planning Act 2023*.

Dated 8 September 2023.



Australian Capital Territory

## **Planning (Exempt Development) Regulation 2023**

**Subordinate Law SL2023-21**

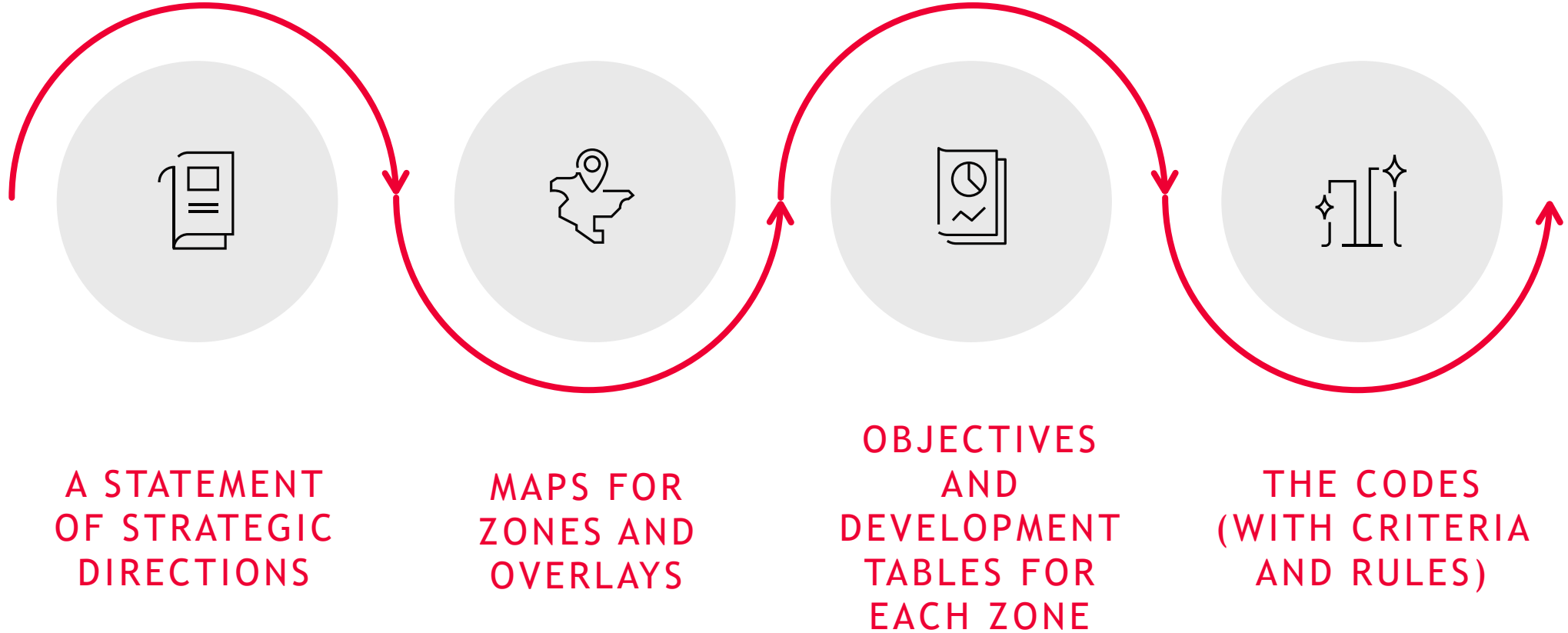
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The Australian Capital Territory Executive makes the following regulation under the *Planning Act 2023*.

Dated 8 September 2023.

# PREVIOUS TERRITORY PLAN

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# WHAT IS THE TERRITORY PLAN

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Specifies what can be built where



Guides the TPA on what to approve or refuse in a DA



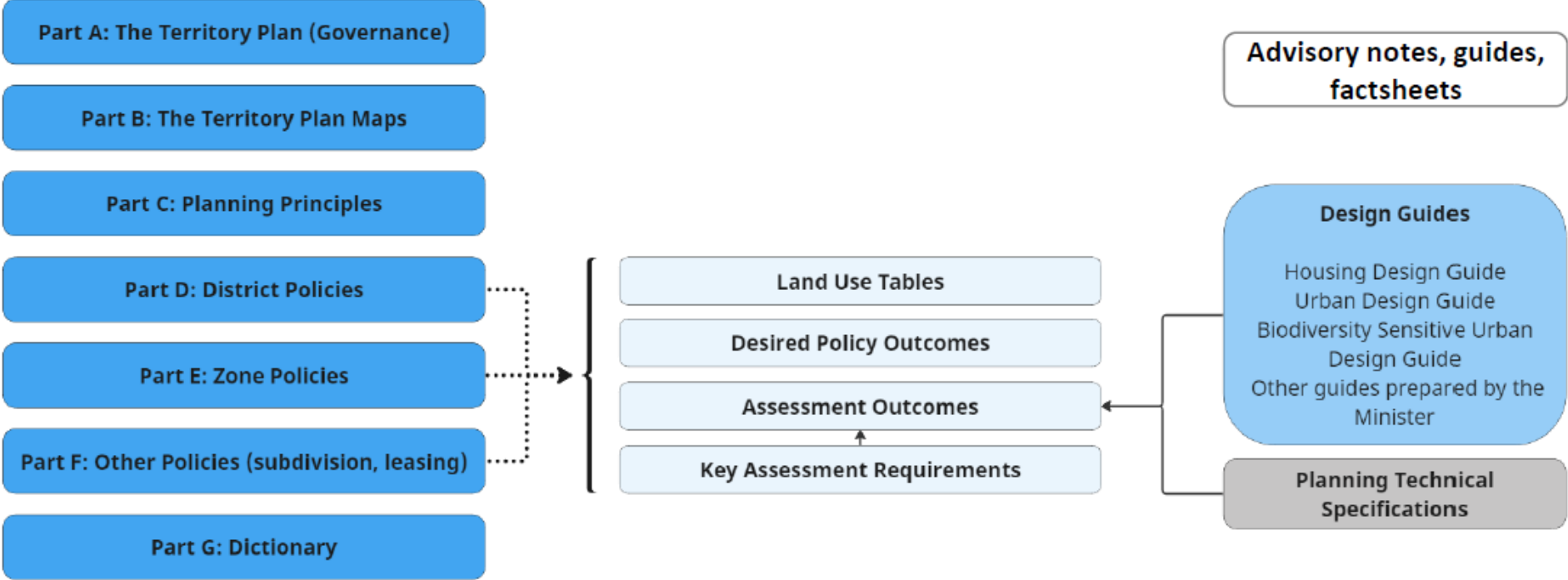
District and zone polices



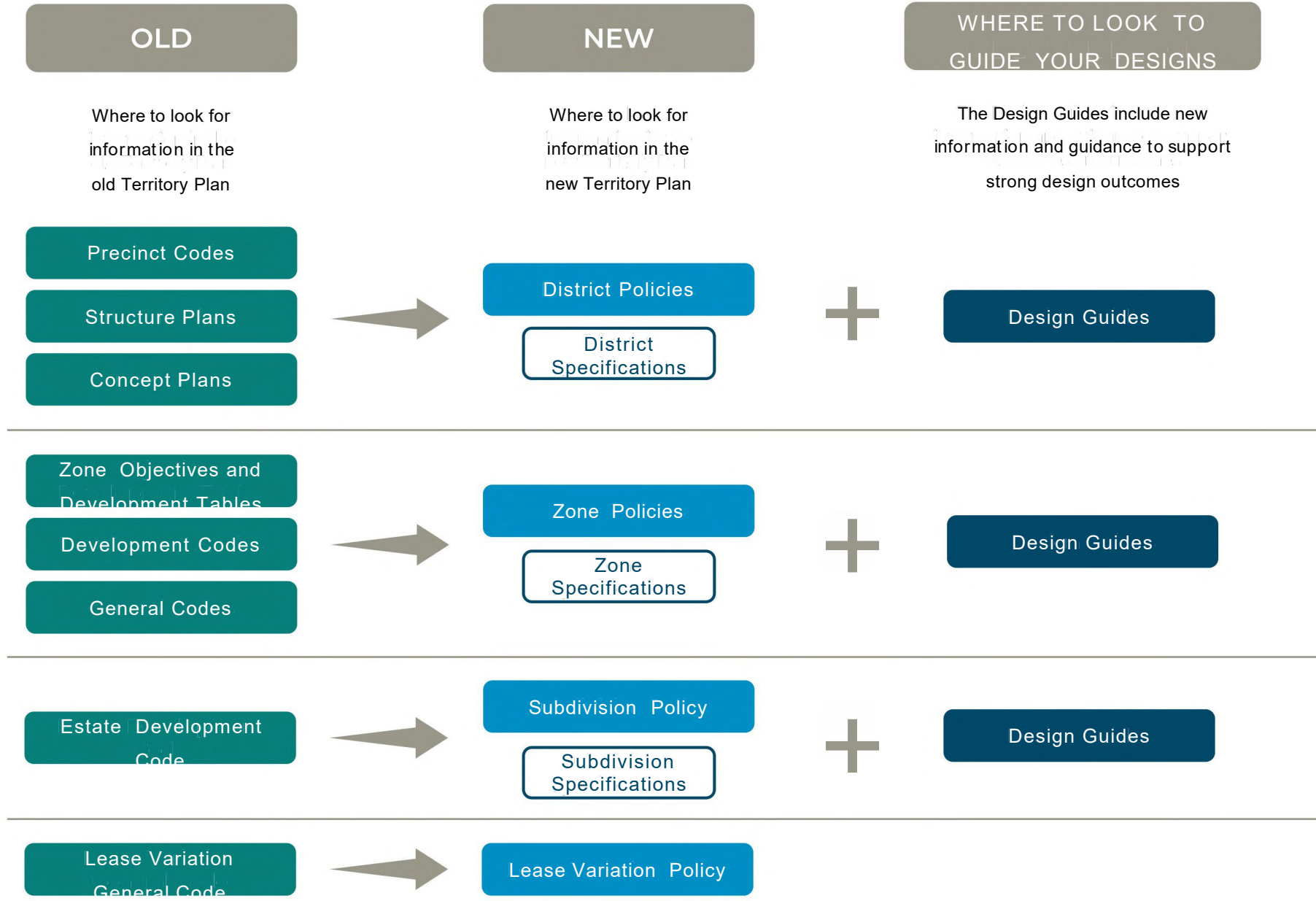
Supporting documents

- Technical specification
- Design guides

# Territory Plan Structure



# WHERE TO LOOK IN THE NEW TERRITORY PLAN PACKAGE



# REMEMBER THESE RULES

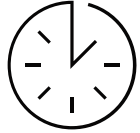
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Assessment  
Requirements  
=  
Mandatory Rules

Assessment  
Outcomes  
=  
Criteria

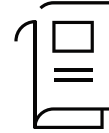
# THE ELEMENTS

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## GOVERNANCE

- Information to understand the administration of the TP
- Identifies where the TP applies
- Explains the component parts
- How parts used in DA assessment



## TP MAPS

- Sets out the maps
- One whole of Territory
- 9 other district maps

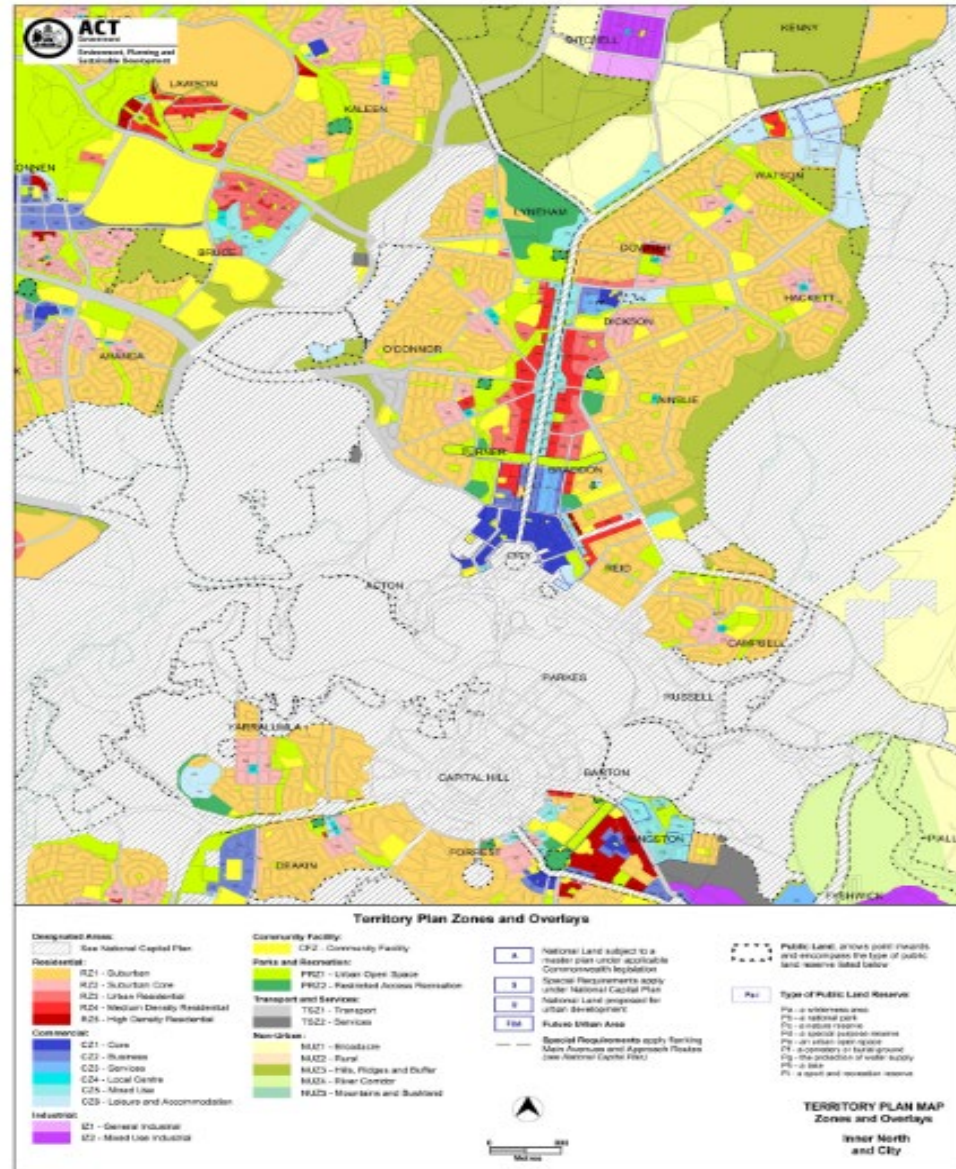


## PLANNING PRINCIPLES

- Details important principles
- The strategic framework for land use
- Principles of good planning



# Territory Plan Map – Inner North and City



# DISTRICT POLICY

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- The current precinct codes
- Builds on the strategic planning for each district
- District strategies inform the District Policies
- Key to shaping change in each District
- 9 Districts



# DISTRICT POLICY

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- Override requirements in Zone or other policies (paramount)
- Specify uses permissible or prohibited on certain blocks (in addition to zone policies)
- Desired outcomes important for the District
- Assessment outcomes and key assessment requirements
- DA must be consistent with all the relevant assessment outcomes and requirements



# ZONE POLICIES

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- The current:
    - Development tables
    - Development codes
    - General codes
  - Land use based on zonings (not Districts)
  - 7 zone policies
  - Incorporates 23 land use zones
  - Identifies permissible and prohibited uses in specific zones
  - Desired policy outcomes in each zone
  - Assessment outcomes and key assessment requirements for a zone
- 

## 1. Application

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The Commercial Zones Policy applies to all development in a commercial zone (CZ1 to CZ6 inclusive).

## 2. Land Use Table

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The following table identifies permissible land uses and development types (marked 'Y') in commercial zones.

The uses listed require development approval unless they meet the 'exempt development' definition of the *Planning Act 2023*. Development and land use types listed are defined in the Territory Plan Dictionary.

Uses not listed in the table are prohibited. Development of prohibited uses may be considered under certain limited circumstances as outlined under Part 7.3 of the *Planning Act 2023*.

District policies specify additional types of development and land uses that are permissible or prohibited in specific locations.

Land Use / Development Type	CZ1	CZ2	CZ3	CZ4	CZ5	CZ6
ancillary use	Y	Y	Y	Y	Y	Y
animal care facility	-	-	Y	Y	-	-
aquatic recreation facility	-	-	-	-	-	Y
boarding house	-	-	-	-	Y	-
bulky goods retailing	Y	Y	Y	Y	Y	-
business agency	Y	Y	Y	Y	Y	-
café	Y	Y	Y	Y	Y	Y
car park	Y	Y	Y	Y	Y	Y





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# THE DA ASSESSMENT SYSTEM

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**\*REMOVED\***  
Pre-DA  
community  
consultation

**1 DA SUBMISSION**

**2 DA ASSESSMENT**  
30 to 60 working days

**3 POST DA DECISION**

Completeness  
check

- Public notification  
15 to 20 working days
- Entity referral  
15 to 20 working days
- Assessment by the TPA

**\*REMOVED\***  
Assessment  
tracks

- NO**  
Significant  
Development
- YES**  
Significant  
Development

Applicant addresses entity  
advice, representations  
and assessment

Second public notification  
10 working days

Second entity referral  
10 working days

Assessment by the TPA

*In some cases the following steps apply*

Further information  
requested

Pre-decision  
advice

Applicant  
provides  
further  
information

Applicant  
amends DA

Applicant  
requests DA  
decision without  
amendment

Further public  
notification  
15 to 20 working days

Further entity referral  
10 working days

Assessment by the TPA

**DA DECISION**

*If no further information or amendment required*

Steps that may  
be required or  
pursued  
following DA  
decision

Conditional  
approval

Application to  
amend  
development  
approvals

Reconsideration

Appeal

# The Development Assessment process

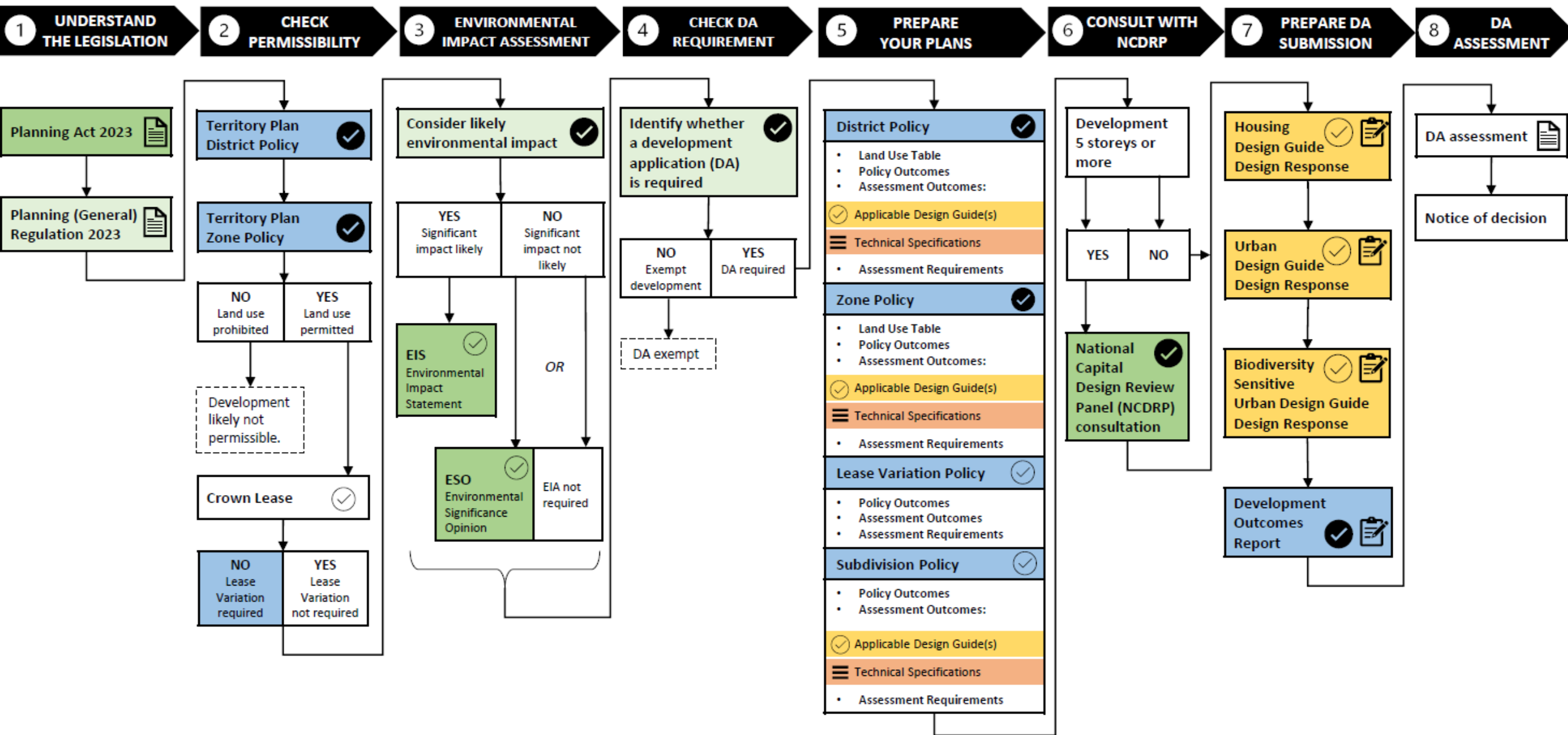
How has it changed?

**KEY**

- Steps occur concurrently
- New process
- Mandatory
- Mandatory (if applicable)
- Public notification
- Applicant

# Navigating the new planning system

## Generic user journey

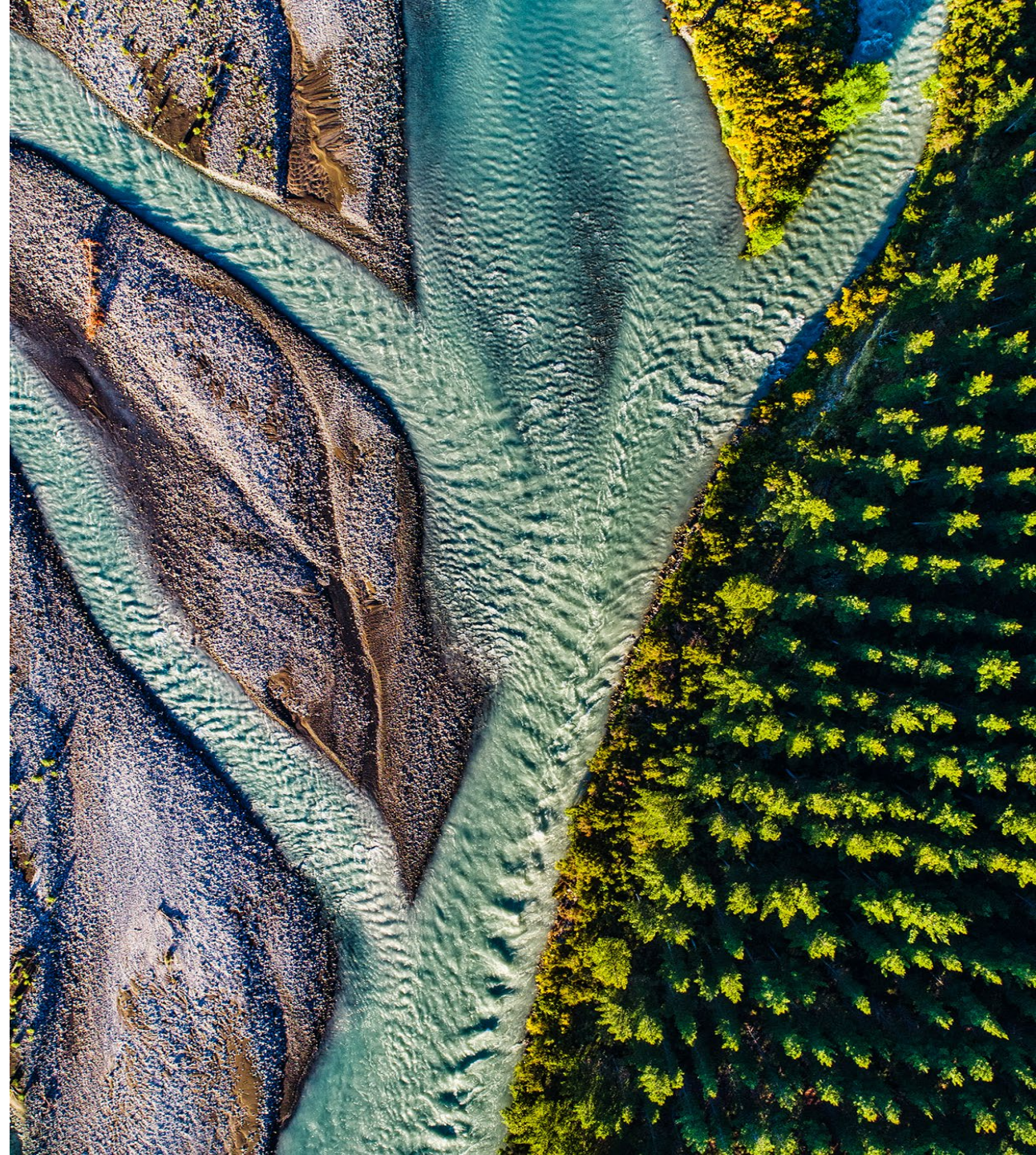


KEY																			
	Planning Act 2023		Planning Regulations		Territory Plan		Design Guides		Planning Technical Specifications		Mandatory consideration		(if applicable)		Optional consideration		Prepare documents		Consider and understand

# DISTRICT STRATEGIES

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- Attempts to answer how we fit in another 100,000 dwellings by 2050
- A new approach to strategic planning in the ACT
- 9 districts (eg Belco, Inner North & City, Inner South)
- Each strategy focusses on the peculiarities with each district
- Details how each district will satisfy the 70% urban infill requirement
- Changes area maps
  - Where urban infill is likely to be and by when (0-5, 0-10, 0-15 years)
- Will shape future TPVs





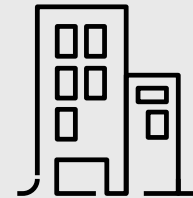
# FOCUS SHIFT

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Compliance  
Focussed



Outcome  
Focussed



# WHAT HASN'T CHANGED?



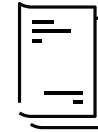
## THE BEDROCK

- Exempt developments
- Lease admin system
- Concessional leases
- Offences
- Review process



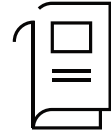
## MAPS AND ZONES

- Remains the starting point for identifying the applicable zone and permitted use
- No real change
- But could change in final TP



## CROWN LEASE

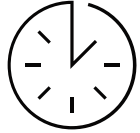
- Compliance with the relevant Crown lease is still crucial
- Still determines existing lessee rights



## PLANNING STRATEGY

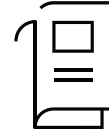
- The influence of the 2018 ACT Planning Strategy remains

# WHAT HASN'T CHANGED?



## DA ASSESSMENT TIMEFRAMES

- Ordinary DA:
  - 30 working days (no objections)
  - 45 working days (with objections)
- Significant development:
  - 60 working days
- Stop clocks (are back):
  - When TPA asks for further information
    - Resumes when information is provided
  - When TPA gives pre-decision advice
    - Resumes when applicant responds



## GENERAL PROCESS

- DAs still need to align with the Territory Plan requirements



## ACAT REVIEW

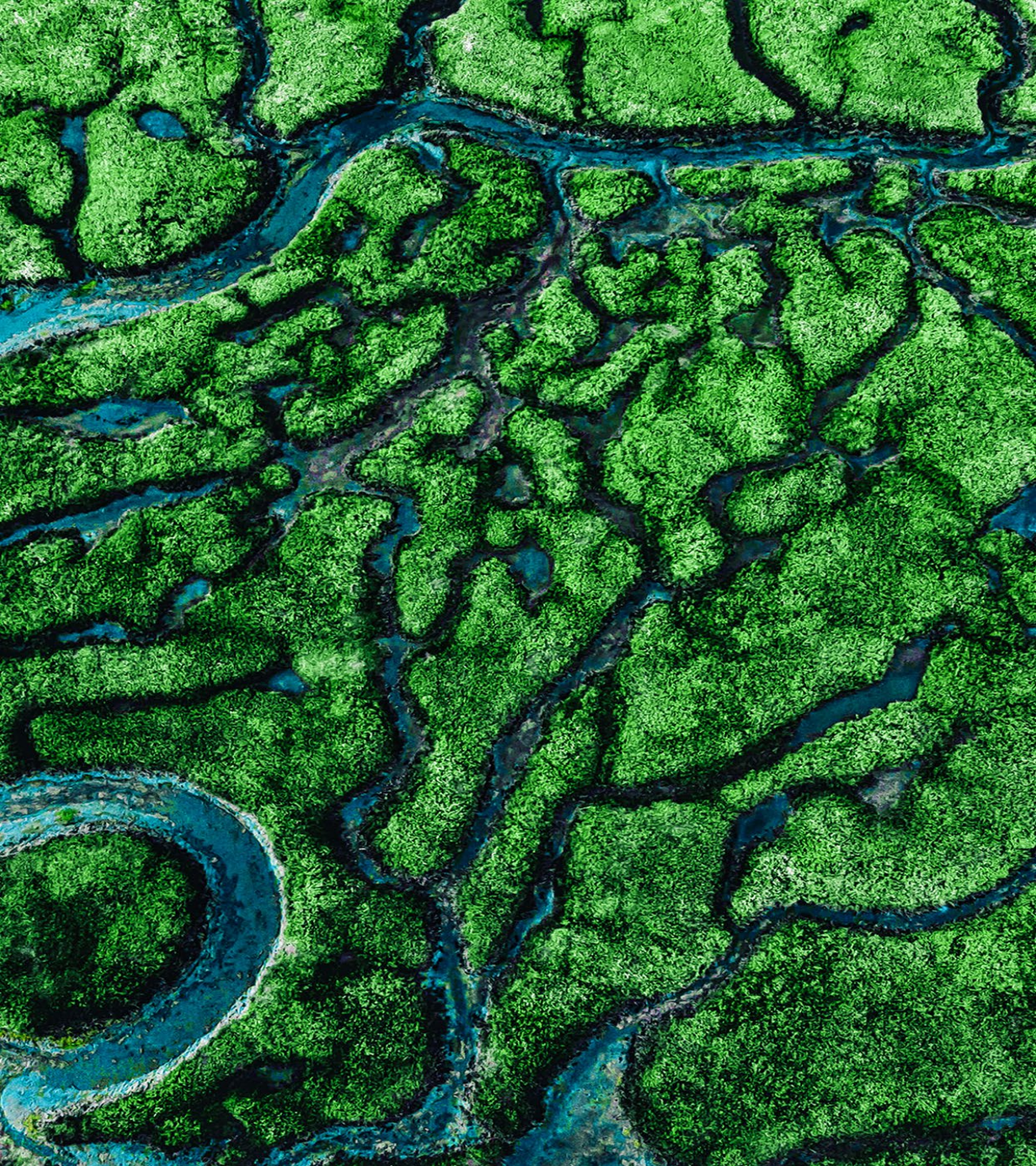
- Same principles generally continue (subject to separate review exercise)
- So objector still to show “material detriment” - same test but refers to adverse impact on entity’s use of “land” as opposed to “the land”
- What will ACAT make of new outcomes assessment process?

# KEY CHANGES

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## CHANGE IN AUTHORITY

- Establishes the Territory Planning Authority (TPA) to replace the Planning and Land Authority
- Now led by the Chief Planner, not the Chief Planning Executive
- New Authority will have increased role in advising on desired future planning outcomes and promoting district strategies
- TPA remains separate from Government



# KEY CHANGES

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## DEVELOPMENT APPLICATIONS

- Now a single pathway of ‘assessable development’
- Introduces ‘significant development’ category
- Makes changes to what needs to be considered by the Authority when considering Das (eg desired outcomes, design in keeping with design guides, any pre-decision advice)

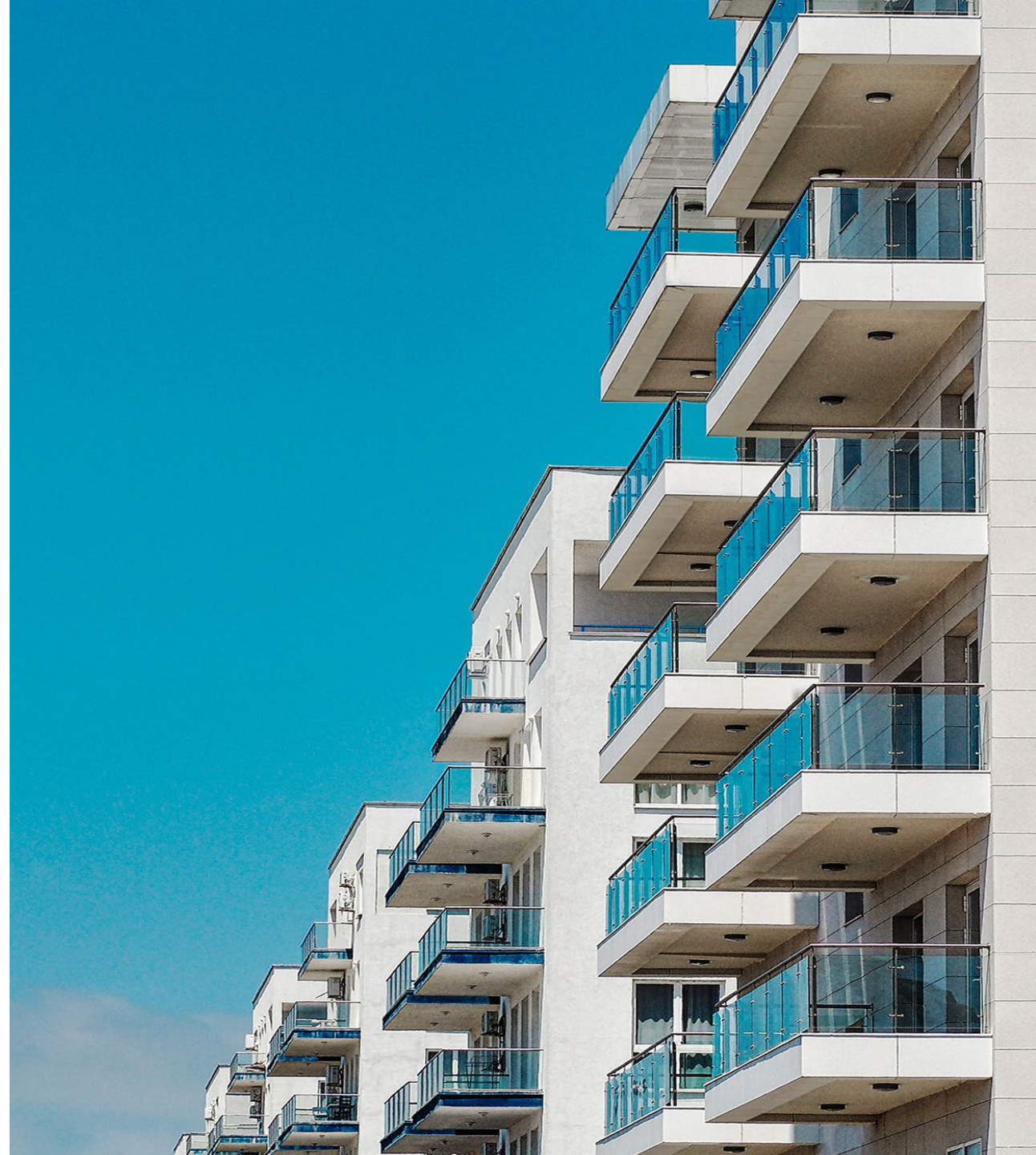


# KEY CHANGES

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## TERRITORY PRIORITY PROJECT

- Replaces Ministerial ‘call-in’ power with ‘Territory Priority Project’ declaration power
- Includes a proposal related to Light Rail
- Chief Minister and Planning Minister must jointly be satisfied that the proposal:
  - Would achieve a major government policy outcome; and
  - Would substantially facilitate a desired outcome in a strategy or TP; and
  - Is of significant benefit to the ACT

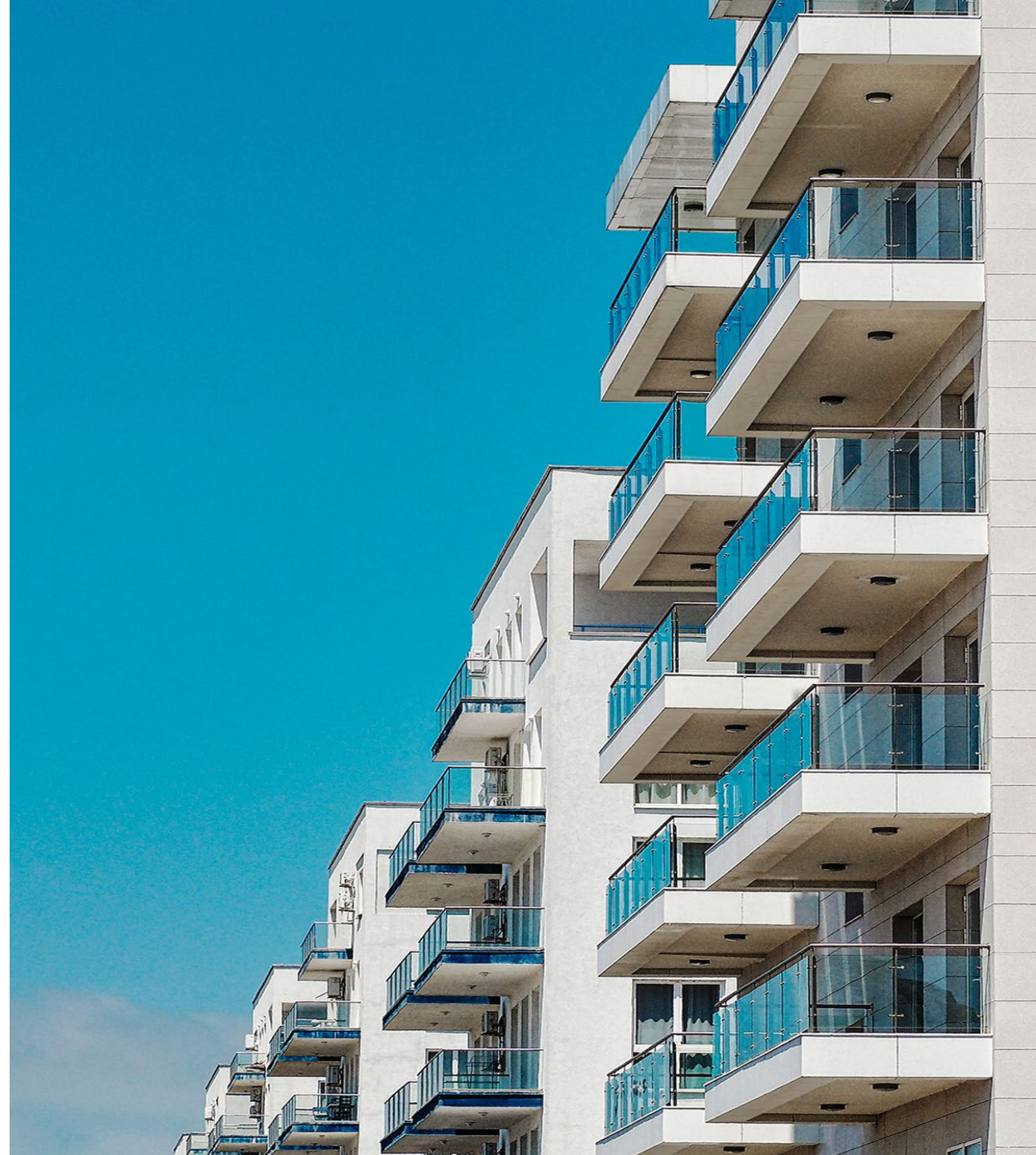


# KEY CHANGES

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## TERRITORY PRIORITY PROJECT

- Previously, call-in applied if:
  - Application raised a major policy issue; or
  - Achieved an object of the TP; or
  - Was of substantial public benefit
- Key distinction is that Territory Priority Project must be declared before DA is lodged



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# PARAMOUNTCY OF TERRITORY PLAN

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Section 52 (replicates Section 50):

*“The Territory, Executive, a Minister or a territory authority must not do any act, or approve any act, that is inconsistent with the Territory Plan.”*



# TERRITORY PLAN AMENDMENT

## MINOR AMENDMENTS



- Technical amendments
- Minor amendments are approved by the TPA following public notification
- An amendment:
  - Not adversely affect anyone's rights; and
  - Corrects an error
- Brings TP into line with NCP

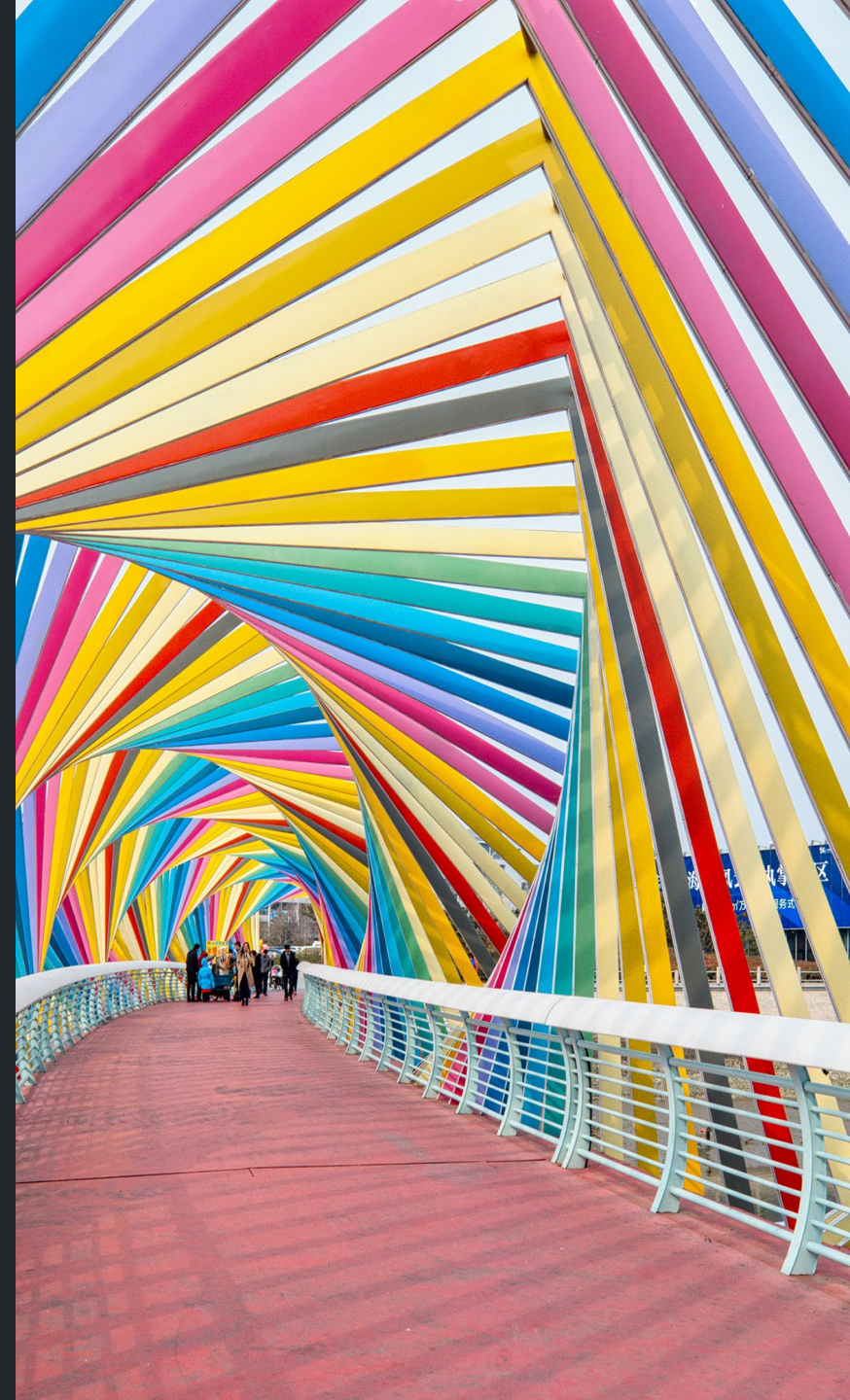
## MAJOR AMENDMENTS



- Are approved by the Minister
- Initiated by:
  - TPA
  - Minister directing TPA
  - A proponent applying to amend the TP

# PROPONENT-INITIATED AMENDMENTS

- Currently no statutory process - reliant on ACTPLA to take up the cause
- New process allows an 'interested person' to apply to TPA to amend TP
  - 'Interested person' = a lessee or person acting with lessee's consent
- TPA has 3 months to accept or reject application
- TPA to have regard to (among other things):
  - Relevant district strategy
  - Any current or proposed TP amendments
- If accepted, application is published in TPA website
  - Treated like a major TP amendment
- No right of review if not accepted



# DEVELOPMENT TYPES

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- **Assessable developments** including ‘significant development’ need development assessment
- **Prohibited development** is generally unlawful
- **Exempt development** does not need development approval
- An offence to undertake a development without an approval
  - S 403 - Up to 2,500 penalty units



# SIGNIFICANT DEVELOPMENT



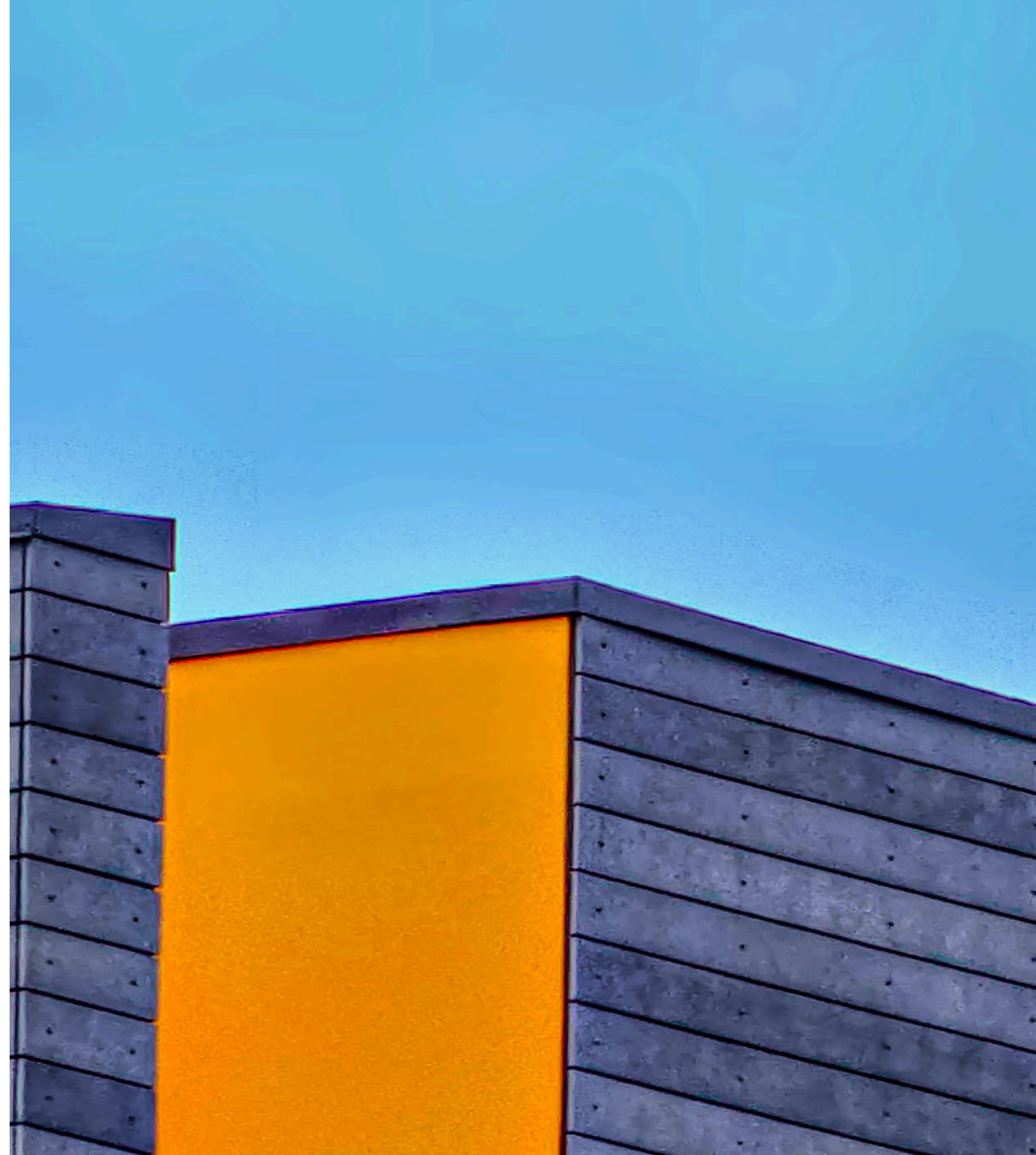
- Requires an extended timeframe for assessment and public notification
- Requires an additional 10 working days of public notification
- TPA has an extra 10 working days to decide DA (60 working days)
- Subject to a second round of public notification (proponent response to objections and agency comments)
- Includes:
  - ‘subdivision design applications’ (formerly EDPs)
  - Proposals that require DRP review (5 stories)
  - Proposals that require an EIS

# CONCESSIONAL LEASES

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## DECONCESSIONALISATION

- Requires DA
- Minister to decide whether to remove concessional status (not TPA)
- TPA must refer DA to Minister
- In determining whether it is in public interest, Minister is to consider many factors including:
  - Should dealings with the lease still require TPA approval
  - Any disadvantage to the public
  - Should there be a buy back
  - Any objections
- Minister cannot approve without Executive (ie Cabinet) approval - so political



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# TEMPORARY USE OF LAND EXEMPTION

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- Possible for TPA to allow a use not contained in the lease purpose clause
- The TPA must be satisfied that:
  - The use is needed urgently; and
  - Using the land for this use achieves significant public benefit
- Timing = For period must reasonably be necessary
- Examples
  - Special community need
    - COVID facility
    - Accommodation for the homeless
  - Important infrastructure assisting light rail

# EXPIRING DAs

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## FORMER RULES

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- A NOD expires in accordance with its terms (usually 2-3 years after it comes into effect)
- Under DA, ACTPLA can approve extension for up to 2 more years
- (New Act applies retrospectively to existing NODs)
- If extension is refused, or expires and works were not commenced in time, the NOD ends and a new DA is required
- Under lease, if works not completed in accordance with B/D, then EOT fees apply
- Sometimes NOD specifies when works are to commence and when works are to be completed
- If no dates for commencing or completing works in NOD, then NOD ends if works are not started within 2 years of NOD coming into effect
- Usually have to complete development within 2 years of starting (unless NOD says otherwise)



# EXPIRING DAs

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## NEW RULES

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- NOD expires 5 years after taking effect (no relevance about when works are to commence)
- NOD continues if start date exceeded
- So if NOD says to start within 2 years and this has not happened, then the NOD continues
  - Offence under Section 406 (fee payable)
  - Subject of controlled activity order
- If 5 years expires, then can apply to TPA to extend 2 more years (ie 7 years total) if:
  - Works started and are substantially progressed; and
  - The development would be approved if subject to a new DA at that time (so a compliance exercise)



# B & D - EOTs

- What happens if you don't complete works as required? (Usually within 3-4 years)
- 4 year grace period before EOT kicks in
- Fee = 1 x rates per year
- New Act closes loophole, so new lessee will pay EOT fee for the period the works are incomplete
- TPA gain a clear power to issue a notice to lessee requiring the works to be completed within reasonable time
- This process is in addition to expiry of NOD



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# ENVIRONMENTAL IMPACT ASSESSMENTS (EIS)

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Environmental Significance Opinions (ESO) retained (ie not likely to have significant enviro impact)



EIS process is largely the same



EIS exemption is removed - instead, Act allows recent studies to be relied on in preparing an EIS



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# TRANSITION

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## DA LODGED BY 27 NOV AND NOT DECIDED

Will be assessed under PDA  
Can only be amended under PDA for 6 months, then PA (new TP) applies

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## NOD BEFORE 27 NOV

Continues under the PDA  
Can amend under PDA for up to 6 months  
Amendments after 6 months are assessable under PA

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## RIGHT TO USE LAND ISSUED BEFORE 27 NOV

Continues afterwards (eg a lease or a licence)



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DA LODGED FROM 27 NOV

Subject to PA (and new TP)

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RENEWAL APPLIED FOR  
BEFORE 27 NOV AND NOT  
DECIDED

Will be decided under PDA, with any  
lease granted under PA

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LEASE OR LICENCE  
GRANTED BEFORE 27 NOV

Deemed to be granted under PA

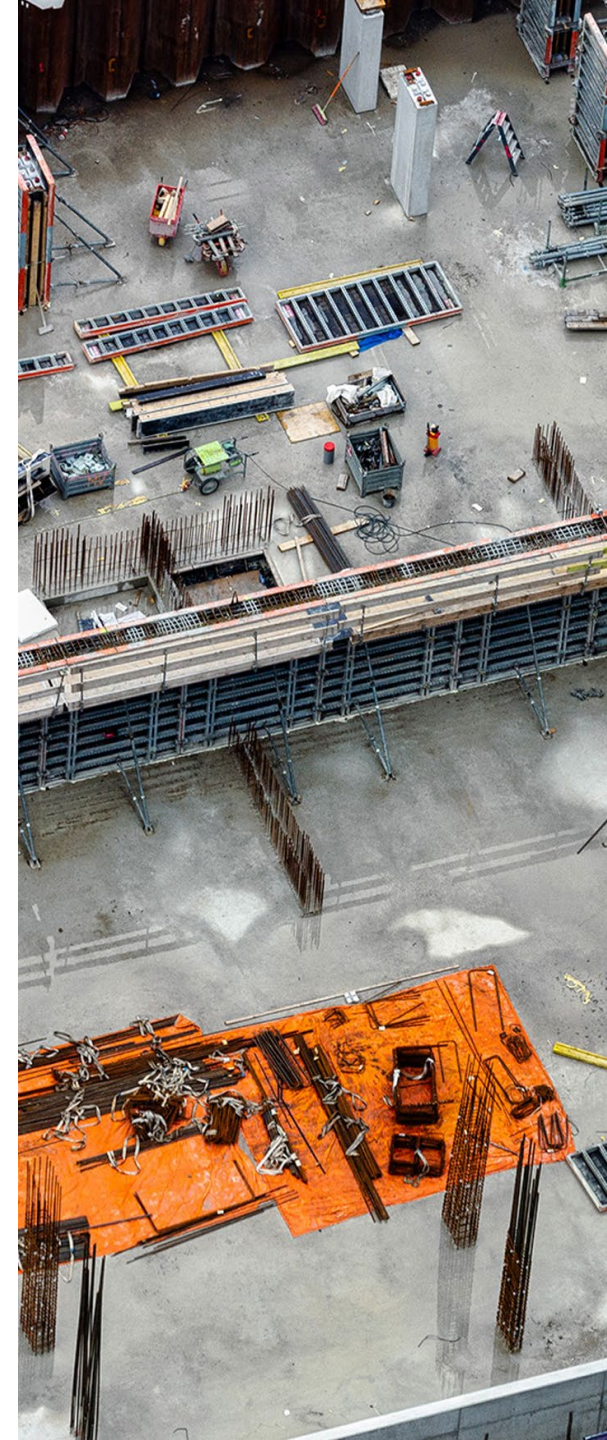


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# TRANSITION - THE UPSHOT

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Essentially, if applied for something pre-27 November (except for direct grant applications) then they are deemed to continue to be processed under PDA





THANKS





**actlaw**  
society

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