



Review of decisions

(Draft Planning Bill - Chapter 15)

The Planning Bill provides opportunities to seek review of decisions made under the proposed Act. Under the merits review process, certain people or organisations can seek a review of decisions made under the Act.

What is merits review?

Merits review is the impartial review of a decision by a different decision maker.

Merits review under the Planning Bill is available in two ways:

1. reconsideration by another member of the Territory Planning Authority (applicants only), or
2. external review by the ACT Civil and Administrative Tribunal (ACAT) (applicants and third parties).

A third party (e.g. a person who has made a representation on a development application) can seek ACAT merits review in certain circumstances.

Reconsideration

The Planning Bill 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.

Our approach to ACAT review in the Planning Bill

If an application is made to the ACAT for review of a decision made under the Planning Act, the ACAT would have the same powers to assess the merits of the matter and make a decision as the original decision maker (i.e. the Territory Planning Authority). The term often used to describe this principle is that the ACAT 'stands in the shoes' of the original decision maker.

The Planning Bill departs from the approach of the 2007 Act, which limits the ability of the ACAT to review all parts of the original decision.

The Planning Bill facilitates a shift to an outcomes-focussed planning system. The focus of decision-making under the Planning Bill is the achievement of good planning and development outcomes, not compliance with quantitative and prescriptive rules. In this context, review by the ACAT should involve review of the whole of a development application on its merits.

What decisions are reviewable by ACAT?

The Planning and Development Act 2007 identifies decisions that are reviewable by ACAT. The Planning and Development Regulation 2008 lists those decisions that are exempt from third-party review. Those provisions apply in conjunction with relevant provisions of the ACT Civil and Administrative Tribunal Act 2008.

The Planning Bill keeps the fundamental approach for review of decisions. It identifies the decisions that are reviewable and who can apply for review (see schedule 6 of the Bill) as well as the exemptions from those general provisions (see schedule 7 of the Bill).





What has changed?

A key approach of the Planning Bill is to identify categories of decision that are exempt from third party review in the Bill, rather than in the regulation. The shift to specifying the exemptions within the Planning Bill promotes transparency and certainty.

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 (see schedule 7 of the Bill).

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. Amongst those criteria are:

- the development must be at least 50 metres from a block within a residential zone
- if the development involves any construction of or alteration to a building or other structure on the land, any new or altered building or structure on the land meets the quantitative requirement for any applicable height and plot ratio provisions
- no environmental impact statement is required.

This means that 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.

Comparison to 2007 Act

Seventeen items were listed as exempt from review under the Planning and Development Regulation 2008. Schedule 7 of the Planning Bill 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 the 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 the Planning Bill.

