

APPENDIX 1: Detailed evaluation of the draft consultation documents for the ACT Planning System Review and Reform Project

Working Paper 1: System Structure ACT Heritage Council Recommendations	What does the Consultation Draft Planning Bill 2022 say?
<p>The <i>Planning and Development Act 2007</i> (PDA) incorporate greater acknowledgement of the Aboriginal culture and history of the ACT, and the continuing role of Traditional Custodians in caring for Country.</p>	<p>Under the Object of Act Section 7 clause (3) the following matters are stated as important in achieving the object of the Act:</p> <p><i>(a) the knowledge, culture and tradition of the traditional custodians of the land, the Ngunnawal people;</i></p> <p><i>(c) the ACT's biodiversity and landscape setting, including the integration of natural, built, cultural and heritage elements;</i></p> <p><i>(d) high-quality, people-focussed and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;</i></p> <p>Under Section 8 the words 'maintenance and enhancement of cultural, physical and social wellbeing of people and communities' includes</p> <p><i>(b) conserving or enhancing places of special aesthetic, architectural, cultural, heritage, historic, scientific, social or spiritual significance;</i></p> <p>Definitions for Aboriginal Object and Aboriginal Place are included in the Interpretations.</p>
<p>The planning framework acknowledge and respond to Aboriginal cultural values, and actively identify involvement of Traditional Custodians in planning processes.</p>	<p>Clause 10 Principles of good consultation enables the Minister to make guidelines about principles of good consultation. The Bill refers to public consultation for example, during the making of the ACT planning strategy, district strategies, the Territory Plan and planning amendments for the ACT. Reference is made to consulting with the Heritage Council as well as interested persons which includes the custodian of the land. The requirements of consultation are detailed in the Bill.</p>
<p>A Heritage Planning Strategy be prepared for the ACT and the strategy be integrated into the new planning system structure.</p>	<p>Chapter 4: Strategic and spatial planning enables the development of a planning strategy for the ACT. The strategy can include other government strategies and policies. The Bill does not specifically refer to the development of a Heritage Planning Strategy/Heritage Strategy. However if ACT Heritage were to prepare such a strategy and it was approved by the ACT Government then it could be included in the overall planning strategy referred to in Clause 34 (2) of the Bill.</p>

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<p>Under Proposed Directions SS1 the proposed statement on the purpose of planning in the PDA include the following words after urban character, <i>'natural and cultural heritage including Aboriginal places and objects'</i>.</p>	<p>Part 2.2 Section 9 Principles of good planning includes 'natural environment conservation principles' but not cultural heritage conservation principles which would include the built environment.</p>
<p>Under Proposed Directions SS3 expand the objectives of planning to include <i>'the identification, protection and conservation of natural and cultural heritage places and objects including Aboriginal places and objects'</i>.</p>	<p>Sections 6 and 7 refer to the key elements of the Act, the Object of the ACT (which includes a defined hierarchy of <i>'planning strategies that inform the content of the territory plan'</i>, and lists the matters important in achieving the Object of the Act including:</p> <ul style="list-style-type: none"> (a) the knowledge, culture and tradition of the traditional custodians of the land, the Ngunnawal people; (c) The ACT's biodiversity and landscape setting, including the integration of natural, built, cultural and heritage elements; (d) high-quality, people focussed and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;
<p>The Heritage Council be consulted on new or amended definitions where these affect heritage places and objects, with the aim of consistent planning and heritage interpretations.</p>	<p>The Dictionary provides the meaning of words and terms referred to in the Bill.</p> <p>The definition of <i>'environment'</i> includes (f) qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity.</p> <p>The term <i>'place'</i> is used in the Bill e.g. Section 182 Conditional approval subclause 2 (l) <i>'for an approval in relation to a place registered for provisional registration, under the Heritage Act 2004 – the applicant must enter into a heritage agreement under the Act for the conservation of the heritage significance of the place.'</i></p> <p>There are several references also in the Bill to 'heritage area(s)' however they are not specifically defined in the dictionary. The Heritage Act 2004 uses the term 'place' and states that this includes 'a site, precinct or parcel of land'. 'Precinct' is defined as follows:</p> <p><i>'precinct means an area that contains buildings, structures or other constructed features that—</i></p> <ul style="list-style-type: none"> <i>(a) are spatially or thematically connected; and</i>

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	<p><i>(b) have a distinct identity; and</i> <i>(c) are located in, or make up, a discernible zone.'</i></p> <p>It is desirable that the Bill use the term 'heritage precinct' rather than 'heritage area' and that the definition of 'precinct in the Heritage Act be included in the Bill' for reasons of consistency.</p>
Amendments to the ACT <i>Heritage Act 2004</i> (Heritage Act) be planned for and resourced as an outcome of the planning review.	The information pack accompanying the draft Bill does not address if there will be any resourcing implications of the planning legislation review as it may affect ACT Heritage or amendments that may be required to other legislation such as the Heritage Act 2004.
The effect of Heritage Council advice on proposed variations to the Territory Plan be clearly defined in planning legislation in ways similar to the effect of such entity advice on referred DAs, and written reasons be provided by ACT Planning to the Council when advice is not followed.	Part 5.2 Transitional-draft territory plan outlines the preparation of the plan and major amendments to that plan. The territory planning authority is required to consult with various parties including the Heritage Council on the draft plan, revised draft territory plan, a draft major amendment or draft review report to that plan and prepare consultation reports to the Executive. The draft Bill however does not require the territory planning authority to adopt the advice of the Heritage Council – rather only to consider that advice.

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Working Paper 2: Strategic Planning ACT Heritage Council Recommendations	What does the Consultation Draft Planning Bill 2022 say?
<p>A hierarchy of spatial plans to be introduced across the Territory. A new strategic statement will be required to accompany the plans with the result being a new spatial vision for Canberra commencing with stronger strategic direction for areas of anticipated change.</p>	<p>Section 7 Object of Act states, amongst other matters, that the planning system should be <i>‘outcomes-focussed’</i> and that part of achieving the object of the Act the planning system is intended to</p> <ul style="list-style-type: none"> <i>(a) be based on policies, processes and practices that are easy to understand;</i> <i>(c) provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan;</i> <i>(d) engage with other laws to support the efficient delivery of other related government policy objectives;</i> <p>Chapter 4 Sections 34 to 38 refer to <i>‘the planning strategy’</i> and <i>‘district strategies’</i>. These are the two main strategic documents in the Bill. It is noted that the Executive is to make a strategy for the ACT in which other government strategies and policies can be included, if appropriate. Public consultation is to be undertaken in the making of these strategies. If there were a Heritage Strategy for the ACT then it would be a candidate for recognition in the new Act. There is currently no suggestion in the draft Bill or the Facts Sheets accompanying the draft Bill that a heritage strategy is being proposed or appropriate.</p> <p>The second layer of strategic planning is district strategies dealing with the <i>‘long-term planning policy and goals for the district.’</i> These strategies are to be consistent with the ACT planning strategy.</p> <p>Section 37 District strategy states:</p> <ul style="list-style-type: none"> <i>(2) A district strategy may—</i> <i>(a) include strategies, spatial policies and desired future planning outcomes for the district to guide and manage change in the district; and</i> <i>(b) set out principles and policies for development of areas within the district, including future urban areas; and</i> <i>(c) identify areas within the district for future detailed planning; and</i>

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	<p><i>(d) include other government strategies and policies applying to the district, if appropriate.</i></p> <p>It is at this district strategy level that there is an opportunity to include individual heritage places and heritage precincts from both a spatial and policy context and, to address issues of change within these areas.</p> <p>The proposed content of the ACT planning strategy and district strategies will become evident when these strategies are prepared for public comment including comment from the ACT Heritage Council.</p>
<p>In the short term, area-specific planning strategies accompanied by local-area policies be pursued with the range of considerations including natural and cultural heritage places including Aboriginal places and objects as well as desired future character. In the medium term, which is when the ACT Planning Strategy is under review in 2023, that consideration be given to introducing district level strategies.</p>	<p>Section 9 of the draft Bill sets out the Principles of good planning which is a new section in the Act. It states that:</p> <p><i>(1) In developing planning strategies, plans and policies, consideration must be given to the object of the Act and the following principles of good planning:</i></p> <ul style="list-style-type: none"> <i>(a) activation and liveability principles;</i> <i>(b) high quality design principles;</i> <i>(c) integrated delivery principles;</i> <i>(d) investment facilitation principles;</i> <i>(e) long-term focus principles;</i> <i>(f) urban regeneration principles;</i> <i>(g) sustainability and resilience principles;</i> <i>(h) natural environment conservation principles.</i> <p>The term integrated delivery principles means, amongst other matters:</p> <p><i>(a) policies relating to planning, including those arising outside the planning system, should be coordinated to efficiently and effectively achieve planning outcomes.</i></p> <p>The connection between the Object of Act and the Principles of good planning is not evident in regard to cultural heritage conservation principles including the built environment. Although there is mention of <i>natural environment conservation principles</i> an additional principle of good planning should include <i>cultural heritage conservation principles</i> relating to</p>

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	<p>Aboriginal, historic and built heritage which are also part of 'good planning.' This is a serious oversight that needs to be addressed and a meaning applied to that term.</p>
<p>That masterplans for specific precincts have statutory effect under the PDA, be enforced and, if amendments are proposed, the local community be consulted and able to comment accordingly.</p>	<p>The draft Bill refers to Estate Development Plans in Part 4.2 Sections 39 and 40. Subclause (2) of Section 39 sets out the matters to be addressed in the making of such plans and what is to be included. Estate development plans deal primarily with greenfield urban development. There is no mention of these plans showing individual sites or precincts that are of cultural heritage significance including of Aboriginal significance. These matters need to be listed to demonstrate consistency with the principles and policies of the district strategy applicable to that estate management plan of which cultural heritage significance is of importance as is the natural environment.</p> <p>The final layer in the Territory wide strategic planning is site planning involving detailed project/site planning and development applications. The ACT Heritage Council currently has input to this layer via the development assessment process e.g. Canberra Brickworks. However it will be important for the District Strategies to include consideration of cultural heritage matters.</p>
<p>The Planning and Development Act 2007 be amended to define the different levels of strategic planning, their respective roles and how they relate to the Territory Plan and to also identify the basic requirements to be addressed in strategic plans.</p>	<p>Chapter 4 Strategic and spatial planning in the draft Bill explains the proposed levels of strategic planning for the ACT. As mentioned above one of the basic requirements in these levels of strategic planning should be cultural heritage including Aboriginal places and objects of significance.</p> <p>The links between and integration of the planning strategy, district strategies and estate management strategies need to be strengthened in the Bill.</p> <p>Section 6 Key elements of Act also refers to the territory plan. This is the plan that sets out the desired planning outcomes, land use and development assessment provisions for the ACT. The hierarchy of planning strategies is to inform the content of the territory plan.</p>

	<p>As stated in the Fact Sheet discussing the Territory Plan: <i>The content of the new Territory Plan will be informed through a review of the policy intent of existing planning strategies and policies and related Government strategies that can be given effect through the planning system. This includes opportunities to better integrate current Government policy into the new Territory Plan, such as the ACT Housing Strategy, the Climate Change Strategy and the ACT Transport Strategy.</i> If there was a Heritage Strategy for the ACT it too could be integrated into the Plan.</p> <p>It is proposed there will be a transitional territory plan prepared to reflect the content of the current review of the Planning Act. The Territory Planning Authority is to be established with the Chief Planner. Chapter 3 sets out the functions and operations of this new authority. Chapter 5 Territory plan explains the object, key components, and effect of the Territory plan. Section 44 states the Contents of the territory plan namely: <i>(1) The territory plan must— (a) include a map (the territory plan map) that identifies districts and designates land use zones; and (b) set out the planning principles and policies for giving effect to the object of the plan, including— (i) the policy outcomes to be achieved by the plan; and (ii) requirements and outcomes against which development proposals are assessed; and (iii) provisions that support compliance with requirements for undertaking development.</i> There is scope within these requirements to also incorporate cultural heritage matters including Aboriginal places and objects. When the transitional - draft territory plan is available for comment the ACT Heritage Council will have the opportunity to respond accordingly as per Section 48 (2)(b)(v) of the draft Bill.</p>
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<p>Working Paper 3: Development Controls ACT Heritage Council Recommendations The Council supports all six Development Control (DC) directions but with the following additions and further recommendations.</p>	<p>What does the Consultation Draft Planning Bill 2022 say? Note: As yet there is no Transitional Draft Territory Plan available for comment</p>
<p><i>DC1: Adopt objective or outcomes-focused development controls</i> – This direction would allow for controls to recognise the heritage characteristics of an area and for such controls to protect and conserve these values.</p>	<p>Part 7.6 of the draft Bill deals with Development approval. It states: <i>'In deciding a development application under section 180, the decision-maker must consider the following:</i> <i>(a) any applicable desired outcomes in the territory plan;</i> <i>(d) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those areas;</i> <i>(e) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;</i> <i>(h) any advice given by an entity to which the development application was referred under section 166 (When authority must refer development application) or section 167 (Further entity referral—more information or amended application);</i></p> <p>Section 184 states: <i>(1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following:</i> <i>(c) for development in relation to which an entity has given advice under section 168—the entity's advice;</i></p> <p>Section 168 requires the entity to provide the advice to the territory planning authority within the number of days prescribed by regulation. Section 169 deals with the effect of approvals or advice in development applications and states: <i>(1) This section applies to an entity if the territory planning authority approves a development application and—</i> <i>(a) if an approval of a development or certification of a thing is required by an entity before the authority can approve the development application—the entity gave a written approval or certification; or</i></p>

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	<p><i>(b) if the development application was referred to the entity under section 166 or section 167—the approval is substantially consistent with the entity’s advice.</i></p> <p>The draft bill also states that conditions can be applied to a development application for example:</p> <p><i>(l) for an approval in relation to a place registered, or nominated for provisional registration, under the Heritage Act 2004—the applicant must enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;</i></p>
<p><i>DC2: Clarify the role and purpose of each zone and code – Again this direction provides the opportunity for an objective that requires the protection and conservation of the identified heritage characteristics of an area.</i></p>	<p>As yet the Transitional - draft Territory Plan is not available to comment on this recommendation. When the draft plan is available this recommendation should be sought. It is noted that it is unlikely that a specific zone or development code for heritage places will be applied in the draft territory plan and that a more appropriate control would be a heritage overlay which could be applied for individual heritage places or objects or heritage precincts.</p>
<p><i>DC3: Strengthen the alignment between development controls and strategic directions, assuming that the strategic directions seek to identify, protect, and conserve the natural and cultural heritage places within the Territory, district, or local area, including Aboriginal places and objects.</i></p>	<p>Section 181 Considerations when deciding development applications outlines matters that the decision-maker must consider. The first consideration is ‘<i>any applicable desired outcomes in the territory plan.</i>’ It will be important that one of the desired outcomes is the protection and enhancement of places and objects of cultural heritage significance and Aboriginal places and objects of significance. The matters to be taken into consideration under this section do not refer to consistency with any relevant strategy or policy. An additional clause needs to be added to this effect to ensure there is consistency with the Territory’s relevant strategies and policies in the development application decision making process.</p>
<p><i>DC4: Expand precinct codes to address existing and desired character of an area, of which a defining feature of the area is its heritage features. The codes can also indicate what qualities should be reflected in new development such as when the development site is located within a heritage precinct or an individual heritage place. Heritage conservation</i></p>	<p>Section 181 Considerations when deciding development applications lists several matters including:</p> <p><i>(a) any applicable desired outcomes in the territory plan;</i></p> <p><i>(d) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those areas;</i></p>

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<p>requirements can inform codes and plans of the planning framework and this reform provides opportunities for consistency between planning and heritage requirements to be adopted. Issues of height, scale, massing, bulk, and the palette of materials need to be addressed in these precinct codes, and especially where heritage buildings are present.</p>	<p><i>(e) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;</i> <i>(h) any advice given by an entity to which the development application was referred under section 166 (When authority must refer development application) or section 167 (Further entity referral—more information or amended application).</i> In addition to (a) above the list of matters should include any relevant code in the Territory Plan applicable to the site.</p> <p>Section 182 Conditional approvals states: <i>(2) The following are examples of the conditions subject to which development approval in relation to land may be given:</i> <i>(a) the development, or a stated stage of the development, must be carried out to the satisfaction of a stated entity;</i> <i>(l) for an approval in relation to a place registered, or nominated for provisional registration, under the Heritage Act 2004—the applicant must enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;</i></p> <p>The desired outcomes in the transitional Territory Plan proposed in the Bill need to include the previous comments and also expand precinct codes to address the existing and desired character of an area and, where relevant, the heritage significance of the place be it an individual heritage place or a heritage precinct.</p>
<p><i>DC5: Develop new controls related to the management of areas identified for change</i> such as overlays or structure plans. For a heritage precinct or individual site of cultural significance there is scope to introduce additional planning tools such as heritage overlays. These could add clarity, certainty, and community confidence in heritage protection, as well as efficiency during processes of change. The content of these overlays would require input from the Council as well as the broader community. Once in place</p>	<p>Controls for the management of areas including areas identified for change will be addressed in the Transitional Territory Plan. The ACT Heritage comments for DC5 therefore remain.</p> <p>It is noted that the term ‘<i>essential design element</i>’ is referred to in Section 183 of the Bill as follows: <i>(1) The territory planning authority, or ACAT, may decide that an element of a development proposal is an essential design element.</i></p>

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<p>these overlays would require strengthening of the current Council's referral powers.</p>	<p><i>(2) An essential design element—</i> <i>(a) must be identified in a development approval; and</i> <i>(b) may be marked on a plan.</i> However the term 'essential design element' is not specifically defined in the Dictionary section. This needs to be addressed.</p>
<p><i>DC6: Provide the planning authority with the ability to exercise discretion in favour of high-quality development outcomes.</i> This would only be supported if the development does not adversely impact, diminish or destroy the heritage significance of the site.</p>	<p>The draft Bill does not specifically address this matter and there is no definition for the terms '<i>high-quality development outcomes</i>' or '<i>public benefit</i>.'</p> <p>It is noted that Section 9 Planning Principles states: <i>high-quality design principles</i> mean the following: <i>(a) development should be focussed on people and designed to—</i> <i>(i) reflect local setting and context; and</i> <i>(ii) have a distinctive identity that responds to the existing character of its locality; and</i> <i>(iii) effectively integrate built form, infrastructure, and public spaces;</i></p> <p>Section 185 Development approval contrary to entity advice states: <i>(1) A decision-maker may approve a development application if—</i> <i>(a) the application is for—</i> <i>(i) a development proposal that is inconsistent with entity advice mentioned in section 184 (1) (c); or</i> <i>(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</i> <i>(b) the proposal or project does not involve a protected matter; and</i> <i>(c) the decision-maker has considered both of the following:</i> <i>(i) the desired outcomes applying to the proposal under the territory plan;</i> <i>(ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and</i> <i>(d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.</i> <i>Note</i> The decision-maker for an application for a territory priority project is the chief planner.</p>

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	<p><i>(2) Also, the chief planner may approve a development application if—</i></p> <p><i>(a) the application is for a significant development that is likely to have a significant adverse environmental impact on a declared protected matter; and</i></p> <p><i>(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</i></p> <p><i>(c) the chief planner is satisfied that the proposal—</i></p> <p><i>(i) is consistent with the offsets policy; and</i></p> <p><i>(ii) would provide a substantial public benefit.</i></p> <p><i>Note The chief planner’s approval must be consistent with approvals required under the EPBC Act.</i></p> <p>Because the draft Bill allows the chief planner to decide about a DA that is contrary to the advice of the Heritage Council there is no guarantee that the cultural heritage place or object or the Aboriginal place or object will be protected and conserved.</p>
While the heritage layer in ACTmapi has proven to be a useful tool for industry, all opportunities should be taken to promote and provide links to the Heritage Register on government web pages, to inform owners or prospective purchasers of a property that it has been nominated for ACT Heritage registration or is already a registered heritage place. This may also be enhanced by a more explicit link between the Heritage Register and the Territory Plan, and relevant notification on title or inclusion in a planning certificate which is issued with the contract of sale or is required to be obtained before lodging a development application.	The current work being undertaken to the ACT Heritage website by the Heritage Council should address these concerns.
Ensure the planning provisions for new development adjacent to a heritage place or heritage precinct are compatible with conservation of the heritage values of the place, including protection of view lines that enhance conservation of the heritage place.	<p>Section 181 Considerations when deciding development applications includes the following:</p> <p><i>(d) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those areas;</i></p> <p><i>(e) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;</i></p>

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	<p>The definition of environment in the Bill includes <i>‘qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity.’</i></p> <p>Although the above subclauses do not guarantee that these considerations will, in all instances, ensure that adjacent development is compatible with the conservation of the heritage values of the place and protect view lines of the place, the Section at least acknowledges this is a matter for consideration when dealing with a development application.</p> <p>The transitional Territory Plan provisions will be the document most relevant to address the Heritage Council’s concern.</p>
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Working Paper 4: Development Assessment ACT Heritage Council Recommendations	What does the Consultation Draft Planning Bill 2022 say? Note: As yet there is no Transitional Draft Territory Plan available for comment
<p>If the Impact/Merit Track system is to be retained, development applications which propose significant adverse heritage impacts are only considered in the impact track.</p>	<p>The draft Bill proposes three types of development they are: <i>(a) assessable development needs development approval and includes significant development under chapter 6;</i> <i>(b) prohibited development is unlawful unless development approval is allowed under division 7.4.1;</i> <i>(c) exempt development does not need development approval.</i> The draft Bill sets out provisions for each of these types of development.</p> <p>This is a different approach than currently exists. This approach is preferred to the impact/merit track system that currently operates and still retains the referral of development applications to a referral entity such as the ACT Heritage Council. It also requires referral of a development application to the conservator of flora and fauna if the Territory Authority is satisfied that a proposed development is likely to have a significant adverse environmental impact on a protected matter.</p>
<p>All DAs proposing works at or near heritage places and objects (spanning registered, nominated, and Aboriginal <i>places and objects</i>) are referred to the Council for entity advice.</p>	<p>There do not appear to be any clear provisions in the draft Bill to require referral to the ACT Heritage Council as a referral entity for a development application <u>near</u> a heritage place or object. The exception would be, for example, where the development site is within a designated heritage precinct under the Heritage Act. However, the territory plan may require referral if stated in the plan but there is little guidance as to what the criteria would be for this to occur. The territory plan should address this concern to ensure consistency in approach.</p>
<p>Where the Heritage Council advises that a proposed development is likely to have a significant adverse heritage impact, the development ‘must not be approved.’</p>	<p>Division 7.5.3 Section 166-169 of the draft Bill deals with Referral of development applications. It states that the territory planning authority must refer a development application to a referral entity (e.g. ACT Heritage Council). The regulations specify a prescribed number of days for the referral entity to provide its advice to the territory planning authority.</p>

	<p>Section 169 Effect of approvals or advice in development applications states:</p> <p><i>(1) This section applies to an entity if the territory planning authority approves a development application and—</i></p> <p><i>(a) if an approval of a development or certification of a thing is required by an entity before the authority can approve the development application—the entity gave a written approval or certification; or</i></p> <p><i>(b) if the development application was referred to the entity under section 166 or section 167—the approval is substantially consistent with the entity’s advice.</i></p> <p>The term ‘substantially consistent’ does not mean that advice from the Heritage Council must be adhered to by the territory planning authority. This term is not defined in the Dictionary of the draft Bill. Also the section does not specifically state that if the advice of the Heritage Council is to refuse a development application that the territory planning authority is required to refuse the DA.</p> <p>Section 184 Restrictions on development approval states:</p> <p><i>(1) A decision-maker may approve a development application for a development proposal only if the proposal is consistent with the following:</i></p> <p><i>(c) for development in relation to which an entity has given advice under section 168—the entity’s advice;</i></p> <p><i>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).</i></p> <p><i>(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;</i></p> <p>The term ‘may’ does not bind the decision-maker to adopt the advice of a referral authority e.g. ACT Heritage Council. Whereas the term ‘must’ would do so.</p>
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	<p>Section 185 Development approval contrary to entity advice states, amongst other matters:</p> <p><i>(1) A decision-maker may approve a development application if—</i></p> <p><i>(a) the application is for—</i></p> <p><i>(i) a development proposal that is inconsistent with entity advice mentioned in section 184 (1) (c); or</i></p> <p><i>(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</i></p> <p><i>(b) the proposal or project does not involve a protected matter; and</i></p> <p><i>(c) the decision-maker has considered both of the following:</i></p> <p><i>(i) the desired outcomes applying to the proposal under the territory plan;</i></p> <p><i>(ii) for a proposal or project requiring an EIS—any reasonable alternative development options; and</i></p> <p><i>(d) the decision-maker is satisfied that acting contrary to the advice will significantly improve the planning outcome to be achieved.</i></p> <p><i>Note The decision-maker for an application for a territory priority project is the chief planner (see s 140).</i></p> <p>In effect Section 185 enables the territory planning authority to act contrary to the advice of the Heritage Council on a DA even though it is the Heritage Council that provides the expertise and experience in matters of cultural heritage significance under the Heritage Act 2004. There are no criteria or guidelines in which to assess the term ‘significantly improve the planning outcome to be achieved.’ The content and intent of Section 185 is of serious concern to the Heritage Council.</p>
<p>Planning referrals are made to the Council for all activities that relate to Aboriginal places and objects.</p>	<p>The terms ‘Aboriginal object’ and ‘Aboriginal place’ as per the Heritage Act definitions are referred to in the draft Bill. Schedule 4 Management objectives for public land also sets out objectives for a ‘heritage area’ which includes natural and cultural heritage places and objects, including Aboriginal places and objects. As a referral entity operating under the ACT Heritage Act planning referrals relating to Aboriginal places and objects apply. Again it is noted that the term ‘heritage area’ needs to be replaced with the relevant definitions in the Heritage Act 2004.</p>

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	<p>Section 27 of the draft of the Planning (General) Regulation 2022 prescribes the Heritage Council as a referral entity for significant development generally if that development relates to a place registered or provisionally registered under the Heritage Act 2004 or the territory planning authority is aware that the proposed development may impact an Aboriginal place or objects.</p>
EIS and ESO referrals are made to the Heritage Council for activities at registered and nominated heritage places and objects (and Aboriginal places and objects as above).	<p>Part 6.3 Environmental impact assessment sets out when an EIS is required, the scope of an EIS, drafting the EIS, consultation on EIS, revision and consideration of an EIS and its finalisation. Section 114 Entity consultation of draft EIS of the draft Bill states: <i>The territory planning authority may—</i> <i>(a) consult on a draft EIS with any entity prescribed for section 106 (3); and</i> <i>(b) give a copy of any submission made by the entity to the proponent of the development proposal.</i></p> <p>Again the term ‘may’ is applied rather than ‘must.’ It is unclear as to the status of nominated heritage places or objects by the territory planning authority when giving ACT Heritage Council advice on an EIS. The draft Bill does not prohibit the Heritage Council providing advice on an EIS which may impact on a nominated heritage place or object but whether this advice is adopted is unclear. It is noted that Section 61(1)(a) of the Heritage Act enables the Heritage Council to give advice on a development on a ‘<i>place or object that has, or is likely to have, heritage significance.</i>’</p> <p>Section 115 Revision of draft EIS states that the revised EIS must address a matter raised by a referral entity and demonstrate how that matter has been considered.</p> <p>Schedule 1 Part 1.2 of the draft Planning (General) Regulation 2022 requires an EIS for a wide range of proposals including: <i>21. proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the Heritage Act</i></p>

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	<i>2004, unless the proposal is the demolition of a building that is affected residential premises, and the heritage council has approved a statement of heritage effect in relation to the proposal.</i>
EIS and ESO referrals are made to the Heritage Council for large greenfield developments. An environmental significance opinion (ESO) is an opinion given by the Conservator of Flora and Fauna, the Heritage Council or the planning and land authority, that a proposal is not likely to have a significant adverse environmental or heritage impact.	Part 4.2 Estate development plans outlines the requirements of such plans. Section 40 refers to a development application approving an estate development plan in which case the DA provisions of the draft Bill would apply including the EIS provisions, if relevant, but also referral to the Heritage Council of a DA and/or EIS if the site included places or objects of heritage significance as identified under the Heritage Act.
Prescribed projects must include pre-DA consultation with the Heritage Council where it relates to heritage places and objects.	<p>The term '<i>prescribed projects</i>' is not adopted in the draft Bill. However the term '<i>Significant development</i>' is dealt with in Chapter 6. Section 91</p> <p>Meaning of significant development states:</p> <p><i>A proposed development is a significant development if it requires any of the following:</i></p> <ul style="list-style-type: none"> <i>(a) an estate development plan under section 39;</i> <i>(b) consultation with the design review panel under section 97;</i> <i>(c) an environmental impact statement under section 102.</i> <p><i>Note A regulation cannot exempt a significant development from requiring development approval (see s 141 (2)).</i></p> <p>It is not clear whether pre-DA consultation with a referral entity such as the Heritage Council is required under the draft Bill. However, it would be wise for the applicant to do so.</p>
There be improved pre-DA consultation with the Heritage Council for activities that would affect heritage places and objects.	Same comment as above applies.
DA submission requirements be formally defined to include heritage information requirement.	<p>Division 7.5.2 Making a development application sets out what must be included in a DA such as:</p> <ul style="list-style-type: none"> <i>(c) accompanied by the plans, drawings, specifications, assessments and other information and documents—</i> <i>(i) sufficient to address each provision of the territory plan relevant to the proposed development;</i>

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	<p>Information about a place or object that is registered or provisionally registered under the Heritage Act on the site would need to be included according to these requirements. However a place or object that has been nominated may not be represented in the DA information and this needs to be addressed.</p>
<p>Entity advice period be responsive to nature and complexity of the application – minimum 15 working days and 30 working days for large and complex referrals and legislation allows entities to request (and be approved) an extension of response timeframes for individual referrals.</p>	<p>Section 168 Entity advice on development applications states:</p> <p><i>1) This section applies if a development application is referred to an entity under section 166 or section 167.</i></p> <p><i>(2) The entity must give the territory planning authority the entity's advice in relation to the development application within the number of days prescribed by regulation after the day the authority refers the application to the entity.</i></p> <p><i>Note A written agreement to a development proposal under section 166 (2) (b) is taken to be advice given in accordance with this section in relation to a development application for the proposal (see s 166 (3)).</i></p> <p>Section 29 of the draft Planning (General) Regulations 2022 identifies the required response time for entity advice as follows:</p> <p><i>The number of days prescribed is—</i></p> <p><i>(a) for a referral under the Act, section 166 (When authority must refer development application)—</i></p> <p><i>(i) if the development application is for a significant development—20 working days from the day the referral is made; and</i></p> <p><i>(ii) for any other development application—15 working days from the day the referral is made or a shorter period agreed in writing by the authority; and</i></p> <p><i>(b) for a referral under the Act, section 167 (Further entity referral—more information or amended application)—10 working days from the day the referral is made.</i></p> <p>A complex/significant development application timeline for a referral authority to respond is 20 days. Also a shorter period for advice on any other development application can be applied.</p>

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	<p>These regulations do not acknowledge the acute resourcing issues facing the Heritage Secretariat to not only progress items on the nominated heritage list for possible registration but provide advice on many DAs including those that are complex. The increase in the sheer number of applications at any one time to be dealt with by the Heritage Secretariat and the Heritage Council is also growing each month. The recommended timelines therefore are:</p> <ul style="list-style-type: none"> • For DAs on registered and provisionally registered heritage places (other than for a significant development) the time for advice be 15 working days from the day the referral is made. • For DAs on nominated heritage places the time for advice be 30 days from the day the referral is made to enable the Heritage Council to assess the likely heritage significance of the place and the impact, if any, of the DA on that significance. It is noted that S.60 of the Heritage Act 2004 currently specifies a 15 day timeline but this has proven to be unrealistic with the current resourcing issues within the ACT Heritage Secretariat and hence the need to amend this legislation too for consistency. • For DAs on registered or provisionally registered heritage places that are 'significant developments' the time for advice be 30 working days from the day the referral is made to the Heritage Council. <p>The Heritage Act will also need to be amended to align with these new timelines.</p>
The ACT Government provide additional resources to the Heritage Council Secretariat to allow delivery of referral advice to relevant government authorities.	This issue is an ACT Government decision and not a matter for the draft Bill even though the lack of adequate resources for the Heritage Council impacts on its activities and its ability to meet all of its obligations under the draft Bill.
All DA approval decisions, regardless of whether they have been referred to the Heritage Council for entity advice, include a standard condition requiring that unexpected heritage finds be managed in accordance with Heritage Act provisions.	<p>Section 182 Conditional approvals for DA approval decisions outlines when conditions can be applied and provides some examples in Section 182 (2) including:</p> <p><i>(a) the development, or a stated stage of the development, must be carried out to the satisfaction of a stated entity;</i></p>

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	<p><i>(l) for an approval in relation to a place registered, or nominated for provisional registration, under the Heritage Act 2004—the applicant must enter into a heritage agreement under that Act for the conservation of the heritage significance of the place;</i></p> <p>Part 15 of the Heritage Act 2004 deals with Heritage agreements. Section 99 (3) states: <i>A heritage agreement may be made in relation to a place or object, whether or not it is registered.</i></p> <p>Section 100 of the Heritage Act outlines the provisions of heritage agreements.</p> <p>The Heritage Council supports the approach of where a DA is approved in relation to a place registered, or nominated for provisional registration, including an Aboriginal place or object, that a condition be applied that requires the applicant to undertake heritage conservation measures to the satisfaction of the Heritage Council.</p>
When approvals longer than 5 years are being considered the Council is to be notified of this as part of the referral process and the Council allowed to identify any additional heritage conditions appropriate to a longer term approval period.	There will be DAs that require the buildings and works to be staged over several years and usually this will be included in the DA information. The draft Bill enables the Heritage Council to exercise its referral entity powers under the Bill and advise of conditions it wants included on a DA approval including conditions appropriate to a longer term period. However there is no statutory obligation for the territory planning authority to adopt these conditions under the draft Bill.
Require that works do not contravene the Heritage Act, and additionally require Council advice on Class 10 structures.	The above comments on the DA process in the draft Bill indicate that the territory planning authority is not required to adopt the advice of the Heritage Council including conditions that may relate to proposed works (see Section 185).
Review, improve and tighten up the development system to strengthen requirements for compliance, including compliance with exempt development criteria.	<p>One of the key elements of the new Act as stated in Part 2.1 is the compliance and enforcement framework.</p> <p>Part 7.2 Exempt development provisions in the draft Bill do not require a referral authority such as the Heritage Council who may have an interest in</p>

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	<p>the proposal to be notified as to whether or not an exemption assessment D notice has been issued or that the exemption assessor is assessing a request for exempt development status.</p> <p>Chapter 13 of the draft Bill addresses Enforcement in detail. Penalty units will apply to different types of non-compliance and notices served for rectification works including failure to comply with required rectification works. The enforcement inspector has the power to be accompanied by an authorised person when undertaking an inspection and this could include for example a representative from ACT Heritage. Search warrants can be issued too.</p> <p>Part 14 of the Heritage Act also addresses the issue of Enforcement.</p>
Ensure education and training for certifiers on heritage criteria and guidelines.	The draft Planning Bill does not address education and training for certifiers on heritage criteria and guidelines and yet this should be a responsibility of the new Territory planning authority.
Entities providing advice under S149 of the PDA be defined as interested entities in Schedule 1.	<p>Schedule 6 of the draft Bill deals with reviewable decisions, eligible entities and interested entities. The proposed definition for ‘material detriment’ does not include damage or loss of a place or object of cultural heritage significance and yet it could be argued that such places and objects are integral to the identity, character, and sense of place of the ACT.</p> <p>Furthermore, the draft Bill states three of the important matters in achieving the object of the Act are:</p> <p><i>(a) the knowledge, culture and tradition of the traditional custodians of the land, the Ngunnawal people;</i></p> <p><i>(c) the ACT’s biodiversity and landscape setting, including the integration of natural, built, cultural and heritage elements;</i></p> <p><i>(d) high-quality, people-focussed and design-led built outcomes that respond and contribute to the distinctive characteristics of the local area, and sense of place;</i></p>

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	<p>The table accompanying Schedule 6 does not recognise a referral entity such as the Heritage Council as an ‘interested entity’ meaning that if the Council wishes to be involved in an ACAT case it would need to be joined by an interested entity listed in column 4 of the table. It is noted that the Facts Sheet on Strategic and Spatial Planning accompanying the draft Bill information states that ‘Community participation is a fundamental element of a good planning system.’ The more detailed Facts Sheet on the draft Planning Bill acknowledges that entity referral is ‘expert advice.’</p> <p>Given the above important matters to achieving the object of the Act it is both illogical and irrational to not include the Heritage Council as an ‘eligible entity’ when dealing with reviewable decisions. The draft Bill seeks the advice of the Heritage Council but denies it direct representation as an eligible entity at ACAT.</p>
<p>Development Assessment Direction 2 to clarify the hierarchy of decision-making considerations is supported particularly if it includes the effect on the amenity of an area.</p>	<p>An object of the draft Bill is to ‘<i>provide a clearly defined hierarchy of planning strategies that inform the content of the territory plan.</i>’ The draft Bill proposes the following hierarchy:</p> <ul style="list-style-type: none"> (1) The Planning Strategy for the ACT – long-term planning policy and goals for the ACT consistent with the Act including a spatial vision, strategic directions, and desired future planning outcomes for the ACT (2) District Strategies – strategies, spatial policies, and desired future planning outcomes at the district level (3) Estate Level Planning – detailed estate plans (4) Site Planning – detailed project/site planning and DAs <p>The Territory Plan sets out the desired planning outcomes, land use and development assessment provisions and is informed by the Planning Strategy and District Strategies.</p> <p>The definition for ‘<i>environment</i>’ in the draft Bill includes:</p> <ul style="list-style-type: none"> (f) <i>qualities and characteristics of areas that contribute to their biological diversity, ecological integrity, scientific value, heritage value and amenity;</i> (h) <i>social, aesthetic, cultural and economic characteristics that affect, or are affected by, the things mentioned in paragraphs (a) to (f).</i>

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	The word 'environment' is used many times in the draft Bill as a consideration in the decision-making processes.
Development Assessment Direction 4 is supported provided that the process for managing strategic developments such as urban intensification integrates relevant heritage parameters/considerations into the planning regime in the interest of consistency and clarity.	The content of the proposed strategic planning and spatial documents referred to in the draft Bill as well as the Transitional Territory Plan will all be important in determining whether cultural heritage considerations are integrated into these documents.

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<p>Working Paper 5: System Operation ACT Heritage Council Recommendations The Heritage Council acknowledges that improvements to the system operation should follow once the future structure of the planning system and development application process is determined. It supports the following System Operation Directions but with additions as stated below.</p>	<p>What does the Consultation Draft Planning Bill 2022 say? Note: A new Territory Planning Authority is proposed in the draft Bill led by the Chief Planner. The Authority will have an increased role in advising on desired future planning outcomes and improved development outcomes through the development application process.</p>
<p><i>SO1 – Aid the interpretation of reformed development controls provided that the design and guidelines developed are consistent with the relevant Council policies and guidelines.</i></p>	<p>These matters relate primarily to the proposed hierarchy of planning strategies and the Transitional Territory Plan – all of which is at present unknown to the Heritage Council in terms of structure and content.</p>
<p><i>SO2 – Provide a greater line of sight between controls and policies provided that these documents acknowledge the importance of protection and conservation of ACT’s natural and cultural heritage where relevant.</i></p>	<p>One of the Facts Sheet on ‘<i>The New Planning Bill-overview</i>’ states: <i>This is about planning for the future – where people will live, how they will move around, how the natural environment will be protected and how our city will be resilient to the impacts of climate change.</i></p>
<p><i>SO3 – Provide stronger guidance regarding the development assessment process including when an applicant also requires an approval from the Council.</i></p>	<p>It is noted that it is also about protecting, conserving, and enhancing ACT’s built cultural heritage environment but this is not mentioned in the Fact Sheet.</p> <p>The more detailed Facts Sheet identifies <i>Principles of good planning</i> that ‘<i>must be taken into account in strategic and spatial planning.</i>’ Again it includes ‘<i>Natural environment conservation principles</i>’ but omits again the built cultural heritage environment. This is a serious omission when talking about good planning principles.</p> <p>This Facts Sheet states also: <i>The content of the new Territory Plan will be informed through a review of the policy intent of existing planning strategies and policies and related Government strategies that can be given effect through the planning system. This includes opportunities to better integrate current Government policy into the new Territory Plan, such as the ACT Housing Strategy, the Climate Change Strategy and the ACT Transport Strategy.</i> A Heritage Strategy for the ACT which deals with all elements of cultural heritage significance including Aboriginal places and objects would be an</p>

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	appropriate document for integration into the new Territory Plan and provide greater line of sight between controls and policies when dealing with cultural heritage places and objects.
<i>SO4 – Provide greater transparency of development assessment applications.</i>	The proposed Territory Planning Authority is not required to give written reasons for a decision on a DA which may be contrary to the advice given by a referral entity such as the Heritage Council and so transparency on decision making of this nature is opaque.
<i>SO5 – Improve the accessibility of information</i>	The draft Bill does not specifically state how access to information will be improved from what currently operates.
<i>SO6 – Improve levels of compliance not only with the building and planning processes but also with the Heritage Act.</i>	The draft Bill again does not specifically highlight improved levels of compliance other than the processes outlined in the Enforcement section. If the Territory Planning Authority does not adopt the advice of the Heritage Council on a DA or EIS matter then it can be concluded that there is not compliance with the Heritage Act.
<i>SO7 – Improve reporting mechanisms to track achievement of strategic policies.</i>	Part 5.5 Review of territory plan at least once every five years is a decision by the Minister. The Minister may delay such a decision for not more than one year. The territory planning authority is required to prepare a draft review report and consult with the Heritage Council on that report. Matters to be addressed in the review are outlined in Section 88. There is however no specific requirement in the draft Bill about reporting mechanisms to track achievement of strategic policies on an annual basis.